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Sinnott, H. A.	"
Stuart & Power (Duncan Stuart, W. Kent Power) (See card, p. 4).	"
Taylor, Moffat & Moyer (Wm. P. Taylor, D. S. Moffat, F. C. Moyer, A. McEwing, J. J. D. Whetham).	"
(See card, p. 4).	"
Trainor, G. A.	"
Tweedie, McGillivray, Barron & Oldham (Thos. M. Tweedie, Alex. A. McGillivray, Jacob B. Barron, J. N. Oldham).	"
Ure Robert	"
Varley, J. E.	"
Wainess W. L.	"
Warner, W. C.	"
Waters, W. Brooks	"
Wright & Wright (J. A. Wright, C. A. Wright).	"
Burgess & McKay (J. K. Burgess, W. J. McKay).	Camrose
Jackson & McIsaac (L. R. Jackson, J. P. McIsaac).	"
Jacobs Zebulon William . .	Cardston
Johnston, William Smith . .	"
Lloyd V. I.	Carlstadt
Hogg A. B.	Carmangay
Russell, P. H.	"
Moore, C. W.	Carstairs
Smith, Michael, M.A., LL.B.	"
Auxier, George	Castor
Murphy, R. C.	"
Haslam, H. O.	Claresholm
Langmuir, F.	"
Watt, J. R.	"
Roberts H. Howes	Coleman
Corey & Locke (L. A. Corey, LL.B., E. C. Locke, LL.B.). (See card, p. 4).	Coronation

- Moore, C. W. Crossfield
 Barnett & Graham (John
 Barnett, P. E. Graham). Daysland
 Archibald Geo. W.Edmonton
 Barclay & Archer (L. T.
 Barclay, J. Archer)“
Bishop & Giroux (E. T.
 Bishop, L. A. Giroux, H.
 S. Coulter). (*See card*, p.
 5).“
 Boothe & Morrow (G. C. M.
 Boothe, Wm. Morrow)“
 Bow, John M.“
 Boyton, C. M.“
 Brice, Edward.“
 Bury, A. U. G.“
 Bydal, Gustaf A.“
 Byers & Hefferman (F. D.
 Byers, J. W. Hefferman).“
 Campbell, John“
 Carr, Henry J.“
 Clarke, Jos. A.“
 Cogswell & Wells (E. B.
 Cogswell, Wm. A.
 Wells)“
 Cormack, Mackie & Lough-
 lin (J. Cormack, H. A.
 Mackie, Stephen J. Lough-
 lin)“
 Cowan, Hector.“
 Dickey Horace A.“
 Dickson, S. A.“
 Dow, R. J. G.“
 Downes, G. F.“
 Eagar, M. W.“
 Edwards, Dubuc & Pelton
 (E. B. Edwards, Lucien
 Dubuc, G. V. Pelton)“
**Emery, Newell, Ford, Bol-
 ton & Mount** (E. C.
 Emery, Frank Ford, K.C.,
 C. F. Newell, K.C., S. E.
 Bolton, C. B. F. Mount, I.
 B. Howatt, N. R. Lind-
 say). (*See card*, p. 5).“
 Ewing, Harvie & Sinclair
 (A. Ewing, A. D. Harvie
 A. MacLeod Sinclair).“
 Friedman, H. A.“
 Gariepy, Dunlop & Co.
 (Hon. W. Gariepy, G. G.
 Dunlop).“
 Grant, Alfred“
 Grant, Chas. A., K.C.“
 Griesbach, O'Connor & Co.,
 (W. A. Griesbach, G. B.
 O'Connor)“
 Harrison & Wilson (W. G.
 Harrison, C. A. Wilson). Edmonton
**Hyndman, Milner &
 Matheson** (H. H. Hynd-
 man, H. R. Milner, A. S.
 Matheson). (*See card*, p.
 5).“
 Lamont, John J. B.A.“
 Landry & Landry (H. L.
 Landry, J. C. Landry).“
 Lavell, John R.“
 Lieberman Moses T.“
 Lymburn & Scrimgeour (J.
 F. Lymburn, J. S. Scrim-
 geour)“
 McCaffry, James“
 McCaul & Valens (Chas C.
 McCaul, Geo. C. Valens)
 McDonald & Tighe (Wal-
 lace McDonald, Robt. D.
 Tighe)“
 Macdonald & Grant (J. K.
 Macdonald, Alex. C.
 Grant)“
 Macdonald, J. M. & Co.
 (James M. Macdonald)“
 Mackay, A. G. & Co. (Hon.
 A. G. Mackay, K.C., B.
 Yule).“
 Mackenzie Keith C.“
 Mackinnon & Matheson
 (Donald H. Mackinnon
 Jos. D. Matheson)“
 Malloch & Morris (James
 Malloch, Alex. Morris)“
Madore, Louis. (*See card*,
 p. 5).“
 Malone & O'Connor (T. B.
 Malone, C. G. O'Connor)
 Marks, Alf. L.“
 Massie, George W.“
 Mode, Allan T.“
 Mustard & Day (W. J.
 Mustard, R. C. Day).“
 Parlee, Freeman, Abbott
 & McKay (H. H. Par-
 lee, K. C. Churchill, L.
 Freeman, P. W. Abbott,
 E. W. McKay).“
 Paul, M. P.“
 Porte & McElwaine (G. R.
 Porte, P. A. McElwaine)
 Rea, Wm.“
**Robertson, Winkler &
 Co.** (Harry H. Robertson,
 Gordon E. Winkler).
 (*See card*, p. 6).“

Rutherford, Jamieson,	Bray, J. M.	Irreana
Grant & Steer (Hon.	Jones Edwin H.	Lacombe
Alex. C. Rutherford.	Macdonald & McBride (A.	
K.C., F. C. Jamieson.	M. MacDonald, J. B. Mc-	
Chas. H. Grant, E. H.	Bride)	"
Steer. (See card. p. 6).	Chartres, W. M.	Leduc
Edmonton	Watt & Watt	"
Short & Cross (Wm. Short,	Ball & Cameron (W. S. Ball,	
K.C., Hon. Charles W.	C. E. Cameron).	Lethbridge
Cross, K.C., Neil D. Mac-	Conybeare, Church, Mc-	
lean, F. J. Ap'John, W.	Arthur & Davidson (C.	
B. Laidlaw).	F. P. Conybeare, K.C., H.	
"	W. Church, M. S. Mc-	
Short, Cross, Maclean,	Arthur R. R. Davidson)	"
Ap'John & Laidlaw.	Dunham, S. S.	"
"	Elton, D. H.	"
Stuart & Stewart (Alex.	Harris, C. F.	"
Stuart, K.C., J. R. F. Ste-	Ives, Wm. C.	"
wart.	Johnstone & Ritchie (L. M.	
"	Johnstone, K.C., J. Nor-	
Thomson, P. G.	man Ritchie, W. S. Gray)	"
Wallbridge, Henwood,	MacKenzie & Menzie (E. C.	
Gibson & Mills (Jas.	C. MacKenzie, H. W. Men-	
E. Wallbridge, K.C., G.	zie)	"
B. Henwood, A. H. Gib-	Ostlund, H.	"
son, R. Mills).	Poapst & Virtue (W. V.	
"	Poapst, A. G. Virtue)	"
Willson, N. C.	Shepherd, Dunlop & Rice	
Wilson, W. S. R.	(S. J. Shepherd, A. E.	
Woods, Sherry, Collisson	Dunlop, G. E. A. Rice)	"
& Field (S. B. Woods,	Smith, R. Andrew	"
K.C., J. C. Sherry, J. T. J.	Munro, James D.	Lloydminster
Collisson, S. W. Field, V.	Campbell & Edmonson (W.	
R. Baldwin, John Macalis-	M. Campbell, K.C., H. Ed-	
ter). (See card. p. 6).	mondson).	MacLeod
"	Fawcett, John L.	"
Morgan, John H. L.	Hicks, J.	"
Edson	Macleod & Matheson (C. Mac-	
Corbett & Harper	leod, W. Matheson)	"
(W. M. Corbett,	McDonald, Martin & Mac-	
Douglas Harper) Fort Saskatchewan	kenzie (J. W. McDonald,	
Corey, Bert S.	T. B. Martin, D. G. Mac-	
Gleichen	Kenzie).	"
Pottage, Frank	Ebbett, A. W., K.C.	Mannville
Grouard		
Blois, H. M.		
Hanna		
Arnold, A. J.		
High River		
Ballachey & Burnet (A.		
"		
Ballachey, F. R. Burnet)		
"		
McCorquodale, A. Y.		
"		
Barnett & Graham (H. O.		
"		
Daysland)		
Innisfail		
Oldham, F. M.		

LORNE N. LAIDLAW
H. O. KNOWLES

IVAN C. RAND
G. F. H. LONG

C. S. BLANCHARD
J. W. DEMPSEY

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Begg, McLarty & Evans		Thomson, J. H. (Jack-	
(W. A. Begg, K.C., N.		son).	Pincher Creek
A. McLarty, R. R.			
Evans). (See card, p.		Franks, P. W.	Ponoka
6).	" "	Baird, F.	Redcliff
Bell, Morley L. (See		Clow, A. B.	"
card, p. 7)	" "	Payne & Graham.	Red Deer
Blackstock, G. M.	" "	Quigg, John	" "
Davidson & Beattie (R.		Russell & McClure	" "
B. Davidson, Wm.		Costigan, J. T.	Stettler
Beattie).	" "	Munro, H. H.	"
Davidson & Bell (G. T.		Roberts & Bennett	"
Davidson, M. L. Bell)	" "	Petrie, J. J.	Strathmore
Dundon, W. P.	" "	Meyers & Lewis (H. G. Myers	
Laidlaw, Blanchard &		G. W. S. Lewis).	Taber
Rand.		Prowse & Lyons (J. H. Prowse,	
Laidlaw, Blanchard,		J. B. Lyons).	"
Knowles & Long (L.		Black, D. C.	Trochu
M. Laidlaw, C. S.		Morrison, F. A.	Vegreville
Blanchard, I. C. Rand,		Russell, Frank W.	"
Herbert O. Knowles,		Ebbett, A. W., K.C.	Vermillion
G. F. H. Long, J. W.		Morrison, J. W. G.	"
Dempsey). (See card,		Matthews, G. S.	"
p. 60).	" "	Kelcey, W. B. F.	Viking
O'Neail, W. J.	" "	Maber Herbert J.	Vulcan
Short & Fraser (S. Short		Cardell, M. G.	Wainwright
G. L. Fraser)	" "	Fieldhouse, H. V.	"
St. Germain, Omer	Morinville	Hunter, Robert	"
Lawrence A. J.	Munson	Knox, Alex.	Wetaskiwin
MacDonald, M. W.	Okotoks	Loggie, Manley & Murphy	
Varley, F. W.	"	(W. J. Loggie, R. W.	
Hazelton & Austin (J.		Manley, R. F. Murphy)	"
Douglas Hazelton, Wil-		Odell & Russell (W. H.	
liam A. Austin).	Olds	Odell, C. H. Russell)	"
Brewer, J. H.	Patience	Watt & Watt (A. S. Watt,	
Beveridge, Ebenezer.	Pincher Creek	J. S. Watt)	"
Methot L. Dorais	" "	Wilkins, E. D. H. (See	
		card, p. 7)	"

BRITISH COLUMBIA

Perry, R. R.	Armstrong	Skaling, A. C.	Enderby
Morgan, Robt.	Ashcroft	Herchmer & Martin (S. Herch-	
Murphy, James	"	mer, J. J. Martin)	Fernie
Stringer, C. E. W.	Athalmer	Lawe & Fisher (F. C. Lawe,	
Baugh, Allen R.	Beaumont	A. I. Fisher, M.L.A.)	"
Hagstrom, H.	Campbell River	Macneil, Alex.	"
Bowes, J. H.	Chilliwack	Hill, F. B.	Golden
Ewen, John	"	Lockwood, H. G.	"
Pelly, Justinian	"	Cochrane, W. B.	Grand Forks
Muir, Andrew	Comox	Hallet, I. H.	Greenwood City
Harvey, McCarter, Mac-		Cornwall & Archibald (F.	
donald & Nisbet, A. B.		Temple Cornwall, J. R.	
McDonald, W. A. Nisbet) Cranbrook		Archibald)	"
Gurd & Spreull (W. F.		Fulton, F. J., K.C.	Kamloops
Gurd, G. J. Spreull)	"	Macintyre & Scott (Alex. D.	
Harrison, P. P.	Cumberland	MacIntyre, Wm. A. Scott)	"
MacLean, Alexander	Duncan	Morley, H. L.	"
Cresswell, E. T.	Duncan's Station	Burne, J. F.	Kelowna

Kerr, R. B.	Kelowna	Briggs, W. I.	Revelstoke
Weddell, E. C.	"	Farris, W. B.	"
Grimmett, M. L.	Merritt	Gillan, C. E.	"
Yates, James A.	Metchosin	Lomas, A. G.	Riverside Inn
Cunliffe, F. S.	Nanaimo	Winn & Lane (E. S. H. Winn, R. W. Lane, Donald Mac- Donald, A. E. Postill) . .	Rossland
Harrison, V. B.	"	McKenzie, R. G. R.	Sidney
Leighton, Ross & Elder (Arthur Leighton, Jona- than Ross, Thos. P. Elder) . .	"	Phillips-Woley, C.	Somenos
Potts, Bevor C. H.	"	Pritchard, A. W.	Thurlow
Crease, E. A.	Nelson	Winn, E. S. H.	Trail
Hamilton & Wragge (C. R. Ham- ilton, K.C., E. C. Wragge) . .	"	Burns, W. E.	Van Anda
Johnson, A. M.	"	Abbott, Macrae & Co (J. L. Abbott, J. K. Macrae, P. R. Duncan)	Vancouver
Moffat, F. C.	"	Adams, Frank R.	"
O'Shea & Farris (James O'Shea) "	"	Anderson, W. G.	"
Bole & Braden (J. P. H. Bole, Robert A. Braden)	New Westminster	Arnold, Charles S.	"
Bole, W. N., K.C.	"	Baillie, T. J.	"
Corbould & Grant (G. E. Corbould, K.C., J. R. Grant)	"	Baird, Wm. J.	"
Hansford, W. F.	"	Banton, Wm. E.	"
Johnston, Adam S.	"	Bayfield & Harvey (Frank J. Bayfield, A. G. Harvey) . .	"
McBride & Kennedy (R. McBride, J. D. Kennedy)	"	Beck & Creagh (A. E. Beck A. R. Creagh)	"
McQuarrie, Martin, Cassady & Mac- Gowan (W. G. Martin, G. L. Cas- McQuarrie, G. E. sady, K. C. Mac- Gowan)	"	Bird, Macdonald & Ross (J. E. Bird, R. M. Macdonald Jonathan Ross)	"
Whiteside, Edmonds & Whiteside (W. J. Whiteside, K.C., H. L. Edmonds, D. Whiteside)	"	Blyth, Andrew	"
Grimmett, M. L.	Nicola	Boak & King (H. W. C. Boak, H. de W. King)	"
Tunbridge, N. F.	Penticton	Bodwell, Lawson & Lane (Ern. V. Bodwell, K.C., James H. Lawson, jun.; Hy. G. Lawson, W. S. Lane)	"
Sanders, Aubrey T.	Port Alberni	Bond & Sweet (L. Bond, J. H. Sweet)	"
Bigelow & King (E. W. Bigelow, B.A., G. A. King). (<i>See card,</i> <i>p. 7</i>).	Port Coquitlam	Bourne & McDonald (H. A. Bourne, D. A. McDonald) . .	"
Carss & Carss (Alfred Carss, Adair Carss)	Prince Rupert	Bowser, Reid & Wallbridge (W. J. Bowser, K.C., R. L. Reid, D. S. Wallbridge) . .	"
Fisher, W. E.	"	Bowser, Douglas, Ladner & Gibson (Hon. Wm. J. Bow- ser, K.C., R. L. Reid, K.C., David Stevenson Wall- bridge, Alex. H. Douglas, Wm. H. D. Ladner, James G. Gibson)	"
Patmore & Fulton (L. W. Patmore, Wm. O. Fulton)	"	Braithwaite, C.	"
Peters, Fred	"	Brown, E. N.	"
Williams & Manson (W. E. Williams, A. M. Manson)	"	Brydon, A. C.	"
Ponsford, Herbert F. Qualicum Beach		Buckworth, A. B.	"
Sherberg, O. A.	Quatsino	Burns & Walkem (Wm. Er- nest Burns, Rich. K. Walkem)	"
		Cameron & Cameron (G. F. Cameron, C. J. Cameron) . .	"

Campbell, D. G.	Vancouver	Hulme, Meredith & Campbell (H. D. Hulme, E. Meredith, J. A. Campbell)	Vancouver
Campbell & Singer (C. F. Campbell, Jos. Singer)	"	Hunt, S. Lucas	"
Casey, A. H.	"	Hurley, T. F.	"
Cassidy, Robt.	"	Jenns, E. A.	"
Cayley, Hugh S.	"	Jeremy, John E.	"
Chaldecott, F. M.	"	Jones, Griffith.	"
Chalmers, Robt. M.	"	Judge, Arthur P.	"
Clark, R. Lennox	"	Kapelle, Arthur James	"
Coburn, Arthur	"	Kennedy & Macintosh (John J. Kennedy, Alan C. Mac- intosh)	"
Colquhoun & Gelletly (R. T. Colquhoun, R. Gelletly)	"	Killam & Beck (Cecil Kil- lam, Jas. E. Beck)	"
Cowan, Ritchie & Grant (Geo. H. Cowan, K.C., Geo. A. Grant)	"	Ladner & Cantelon (Leon J. Ladner, Wm. A. Cante- lon)	"
Darling & Noble (C. Darling J. B. Noble)	"	Larsen, Thorleif	"
Davis, Marshall, McNeill & Pugh (E. P. Davis, K.C., D. S. Marshall, C. B. McNeill, K.C., J. S. Pugh)	"	Lennie, Clarke & Hooper (Robt. S. Lennie, Jno. A. Clarke, T. B. Hooper). (See card, p. 7)	"
Daykin & Burnett (A. N. Daykin, E. A. Burnett)	"	Linklater, Geo. R.	"
Deacon, Deacon & Wilson (W. S. Deacon, E. J. Dea- con, T. E. Wilson)	"	Livingston & Odell (S. Livingston, M. B. O'Dell)	"
Dickie & Debeck (Ernest A. Dickie, Edwin K. de Beck)	"	Long G. Roy	"
Donaghy, Archibald	"	Lucas & Lucas (F. G. T. Lucas, E.A. Lucas)	"
Donaghy, Dugald	"	Lyons, Frank	"
Dorrell, Geo. H.	"	McCrossan & Harper (G. E. McCrossan, A. M. Harper)	"
Downie, Donald	"	McDonald, D. W. F.	"
Duncan & Duncan (G. G. Duncan, H. J. Duncan)	"	Macdonald & Hay (Chas. Macdonald, J. G. Hay)	"
Duncan, George	"	Macdonnell Donald G.	"
Elliot, John	"	McDougall & McIntyre (F. J. McDougall, P. J. Mc- Intyre)	"
Ellis & Brown (J. N. Ellis, W. C. Brown)	"	McFarland, J. W.	"
Emanuels, Sam	"	McFarlane, Wm. H.	"
Farrer, G. E.	"	Macgill & Grant (James H. Macgill, W. P. Grant)	"
Farris & Emerson (J. W. de B. Farris, J. Emerson, Thos. E. Parke)	"	MacInnes, J. A.	"
Fillmore & Todrick (C. L. Fillmore, Thos. Todrick)	"	McKay & O'Brian (W. M. McKay, C. M. O'Brian)	"
Findlay, J. A.	"	McLellan, Savage & White (L. B. M. McLellan, Wm. Savage, C. J. White)	"
Fisher, N. Rigby	"	McLeod, F. M.	"
Fleishman, Arthur H.	"	McMurrich, John D.	"
Fraser, Arthur A.	"	McNeill, A. H.	"
Gillespie, W. D.	"	McPhee, J. D.	"
Gordon, Geo. R.	"	McPhillips & Smith (L. G. McPhillips, K.C., H. M. Smith)	"
Grant, Gordon M.	"	McQueen, G. R.	"
Gwillim, Crisp & McKay (F. L. Gwillim, F. G. Crisp, J. S. McKay)	"	McTaggart & Ellis (D. E. McTaggart, R. W. Ellis)	"
Harris Bull & Mason (R. W. Harris, K.C., A. E. Bull, Percy G. Mason)	"		
Henderson, Alex., K.C.	"		

Maitland, Hunter & Maitland (Robt. R. Maitland, A. L. P. Hunter, R. L. Maitland)	Vancouver	Shaw, Shaw & Haviland (Harry C. Shaw, Vernon H. Shaw, J. A. Haviland)	Vancouver
Martin, Craig & Parkes (J. Martin, K.C., C. W. Craig, R. B. Parkes)	"	Shoebbotham, T. B.	"
Matheson & Carter (MacKenzie Matheson, Wm. D. Carter, K.C.)	"	Smith, A. Neville	"
Mellish, A. J. B.	"	Smith, Donald	"
Millard, H. H.	"	Steers Wm.	"
Moore, S. A.	"	Taylor & Campbell (A. D. Taylor, K.C., Hugh Campbell)	"
New Cecil E.	"	Taylor, Harvey, Grant, Stockton & Smith (S. S. Taylor, K.C., Jas. A. Harvey, K.C., E. J. Grant, Ronald P. Stockton, R. Smith, A. H. Boulton)	"
Phipps & Crane (R. G. Phipps, H. J. Crane)	"	Thompson, H. P.	"
Powis, John E.	"	Tiffen & Alexander (Fred Wm. Tiffen, Arthur Alexander)	"
Price Milton.	"	Townley, T. O.	"
Raines & Co.	"	Truesdale, W. E.	"
Read & Mather (P. Hamilton Read, J. Fred. Mather)	"	Tulk, A. Edw.	"
Reeve, J. M.	"	Tupper, Kitto & Wightman (Sir C. H. Tupper, K.C.M. G., A. J. Kitto, H. W. Wightman)	"
Ritchie, W. Balmond	"	Van Roggen, Matthew A.	"
Robertson, Geo.	"	Waterfall, A. R.	"
Robinson, Hume B.	"	Weart, J. W.	"
Roome, E. H.	"	Were, R. C. J.	"
Ross, Edwin B.	"	Whiteside, Arth. M.	"
Rubinowitz, Israel I.	"	Williams, Walsh, McKim & Housser (A. Williams, K.C., W. W. Walsh, H. C. N. McKim, Geo. E. Housser)	"
Ruggles, H. D.	"	Wilson & Jamieson (A. D. Wilson, Stewart Jamieson)	"
Ruggles & Layton (H. D. Ruggles, F. P. H. Layton)	"	Wilson & Whealler (Chas. Wilson, K.C., A. Whealler, R. Symes)	"
Russell, J. A.	"	Wintemute & Robson (B. P. Wintemute, R. G. Robson)	"
Russell, Macdonald & Hancox (F. R. McD. Russell, M. A. MacDonald G. E. Hancox)	"	Wood, H. S.	"
Russell, Mowat, Wismer & McGreer (F. R. McD. Russell, M. A. Macdonald, J. McDonald Mowat, G. E. Hancox, G. S. Wismer, G. G. McGreer)	"	Woods, Edw. M. N.	"
St. John & Jackson (Chas. St. John, Frank A. Jackson)	"	Woodworth, Chas. M.	"
Saunders, F. C.	"	Yarwood, E. M.	"
Sawers, C. W.	"	Zimmerman Geo.	"
Scott & Goodstone (Wm. A. Scott, Albert I. Goodstone)	"	Cochrane & Ladner (A. O. Cochrane, W. D. H. Ladner, C. F. Reinhard)	Vernon
Scrimgeour, Hogg & Gilling (John M. Scrimgeour, John P. Hogg, N. V. Gilling)	"	Heggie & DeBeck (H. A. Heggie, H. C. DeBeck)	"
Sears, J. Edw.	"	Ritchie, John W. P.	"
Senkler & Van Horne (J. H. Senkler, K.C., Geo. C. Van Horne)	"	Aikman & Austin (James A. Aikman, John H. Austin, Victoria	

Barnard, Robertson, Heisterman & Tait (G. H. Barnard, K.C., B. Robertson, H. G. S. Heisterman, E. L. Tait, A. W. Milligan). *See card*.
p. 8).Victoria

Bass & Bullock-Webster (Oscar C. Bass, W. H. Bullock-Webster)"

Beckwith, H. A."

Bodwell & Lawson (Ern. V. Bodwell, K.C., James H. Lawson, jun.)"

Bradshaw & Stacpoole (Clarence W. Bradshaw, Frank J. Stackpoole)"

Cameron, Angus W."

Carmichael, Alfd."

Child, Sydney"

Courtney & Elliott (C. K. Courtney, F. C. Elliott)"

Courtney, H. E. A."

Crease & Crease (L. Crease, A. D. Crease)"

Davie, C. F."

Dumbleton, A. S."

Dunford, John O."

Dunn, Walter T."

Eberts & Taylor (Hon. D. M. Eberts, K.C., W. J. Taylor, K.C.)"

Elliott, Maclean & Shandley (R. T. Elliott, K.C., H. A. Maclean, H. H. Shandley)"

Fell Thornton"

Gordon, Victor"

Green, John R."

Grime, W. W."

Hall, H. G."

Hankey, S. T."

Harrison, C. L."

Harrison, Eli"

Herchmer, H. W."

Higgins, F."

Innes, A. S."

Jackson & Baker (M. B. Jackson & E. G. P. Baker)"

Keefer & Pitts (Hugh C. Keefer, Clarence H. Pitts) .Victoria

Langley, W. H."

Lyons, C. S."

McDiarmid, Gahan & White (F. A. McDiarmid, W. H. T. Gahan, A. M. White)"

Macfarlane & Gordon (A. D. Macfarlane, Victor Gordon)"

McIntosh, J. C."

Mackay & Miller (N. F. Mackay, E. Miller, J. V. Cope-
man)"

McLean, Alex."

Martin & Lumsden (Alexis Mar-
tin, E. R. Lumsden)"

Mason & Mann (C. D. Mason,
J. P. Mann)"

Mills, L. C."

Moore, Chas. F."

Moore, H. W. R., B.A."

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Oates, Arthur"

Oliver Wm. E."

Patton, A. J."

Phelan Cecil B. S."

Pooley, Luxton & Pooley (Hon. C. E. Pooley, K.C., A. P. Luxton, R. H. Pooley)"

Price, Wm. H."

Prior, C. J."

Tait & Brandon (David S. Tait, James S. Brandon)"

Twigg, H. Despard"

Vaughan, Wm. R."

Walls, John Patmore"

Walls, John Percival"

Wemyss, D. N."

White, Cleeve G."

Wilson, Chas. E."

Wootton, E. E."

Yates & Jay (J. S. Yates, Geo. Jay)"

MANITOBA

Stubbs, Lewis St. G.Birtle

MacKenzie, C. Y.Boissevain

Morrow, J."

Adolph & Blake (H. L. Adolph, Charles Blake).
(*See card*, p. 8).Brandon

Buckingham, A. G."

Clement & Clement (S. E. Clement, R. A. Clement)"

Coldwell, Coleman & Kerr (Hon. George R. Coldwell, K.C., George B. Coleman, K.C., N. W. Kerr)Brandon

Henderson & Matheson (Henry E. Henderson, K.C., R. M. Matheson, K.C.).
(*See card*, p. 8)."

- Howden & Howden (A. Howden, J. Howden) . . . Brandon
- Kilgour, Foster & McQueen**
(J. F. Kilgour, G. H. Foster, R. H. McQueen). (*See card, p. 8*) . . . "
- Manmbe, de W. "
- McKay, S. H. "
- Macdonald, R. G. "
- Smith, A. W. H.** (*See card, p. 9*) "
- Barrett, G. Carberry
- Card, W. D. "
- Garland, R. A. "
- Hooper, H. R. "
- Butcher, F. J. Carman
- Robison, H. E. "
- Garbutt, O. D. Crystal City
- Bowman & McFadden (J. L. Bowman, J. N. McFadden), Dauphin
- Colquhoun, Martin S. Deloraine
- Georges, J. Milton "
- Forrester & Forrester (D. Forrester, W. R. Forrester) Emerson
- Cory, J. G. Gilbert Plains
- Jacob & Fahrni Gladstone
- Mitchell, Francis Henry Glenboro
- Rinn, J. Holland
- Hay, A. G. Killarney
- Williams, T. A. "
- Bradley, G. F. Manitou
- Ellis & Armstrong (W. F. Ellis, G. T. Armstrong) "
- Rowe, W. J. "
- Crerar, John Melita
- Yuill, D. W. "
- Eakins, George A. Minnedosa
- Maulson & Harrison** (H. F. Maulson, K.C., R. Harrison) "
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- Bowen, A. W. Morden
- McConnel, H. McK. "
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- Davis, Fred L. Neepawa
- Howden, James H. "
- Wemyss, J. "
- Pelkey, E. L. Pilot Mound
- McKay, Roy Portage la Prairie
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- Taylor & Colwill (F. G. Taylor, James Roy Colwill) "
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- Wilson & Glen "
- Benson, B. S. Selkirk
- Heap, Frederick "
- Thornburn, W. "
- Markle, M. C. Shoal Lake
- Boswell, C. M. Souris
- Forrest, S. H. "
- Hetherington, E. G. "
- Coleman & Edwards (W. W. Coleman, H. Edwards) Stonewall
- Rothwell, B. E. Swan River
- Wright, S. R. "
- Clapp, David, B.A. The Pas
- Campbell, John A. "
- McLelland, G. A. "
- Goulter & Chalmers (H. H. Goulter, James H. Chalmers) Virden
- Prichard, John "
- Atkinson, C. L. Wawanesa
- ADAMSON & LINDSAY** (J. E. Adamson, G. C. Lindsay) Winnipeg
- Aikins, Fullerton, Foley & Newcombe.**
- Aikins, Loftus & Aikins**
(Sir James Aikins, K.C., C. H. Aikins, C. P. Fullerton, K.C., Edwin Loftus, J. P. Foley, K.C., C. K. Newcombe, A. B. Bell, R. M. Fisher, D. Nicholson, B. W. Bridgeman) (*See card, p. 9*) "
- Andrews, Andrews, Burbidge & Bastedo** (Alfred J. Andrews, K.C., Fletcher S. Andrews, F. M. Burbidge, D. L. Bastedo, Herbert Andrews, J. K. Bell, S. L. Goldstine, L. T. S. Norris-Elye) "
- Atkinson, Railton E. "
- Auld, Wemyss & Hickey (J. Auld, D. N. Wemyss, R. E. Hickey) "
- Baker & Davidson (H. N. Baker, G. A. Davidson). "

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Beaubien, J. Thomas	"
Beaubien, Louis P.	"
Beaudry E. M.	"
Beaupre, J. A.	"
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Bertrand, Theo.	"
Beveridge & Hamilton (E. Beveridge, W. D. Hamilton)	"
Bingham, E. J.	"
Bonnar, Trueman, Hollands & Robinson (R. A. Bonnar, W. H. Trueman, W. Hollands, T. Wesley Robinson) . . .	"
Bowles, A. E.	"
Boyd & Thornton (W. S. Boyd, G. S. Thornton) . . .	"
Brooks & Sutherland (I. F. Brooks, W. C. Sutherland) . . .	"
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Campbell, R. E.	"
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Clark, Herbert W.	"
Clark & Jackson (O. H. Clark, Clarence W. Jackson) . . .	"
Collinson John C.	"
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Corbett, W. A.	"
Coulter & Procter (G. Coulter, R. J. Procter)	"
Coyne, Hamilton & Martin (J. B. Coyne, K.C., F. Kent Hamilton, Wm. Martin, J. Galloway). (<i>See card, p. 10</i>)	"
Crichton, McClure & Cohen (W. M. Crichton, R. W. McClure, E. A. Cohen) . . .	"
Culter, Hugh D.	"
Davies John D.	"
Deacon, Benj. L.	"
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Dixon, Chas. H.	"
Doidge, Walter	"
Donovan, W. J.	"
Doyle, Matthew N.	Winnipeg
Dubuc, Albert	"
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Dysart & Dysart (A. K. Dysart, G. A. H. Dysart) . . .	"
Edwards, Harris	"
Elliott, Allan B.	"
Elliott, MacNeil & Beattie (G. A. Elliott, M. G. MacNeil, Henry Beattie) . . .	"
Ewart, T. Seaton	"
Ferguson, Thos. R.	"
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Fisher E. Bailey	"
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Graham, Campbell, Hannesson & Bingham (R. B. Graham, H. M. Hannesson, A. C. Campbell, H. R. McTavish, E. J. Bingham, G. A. Axford)	"
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Graham, H. W.	"
Gyles, Henry F.	"
Haney, Mitchell & Hamilton (John R. Haney, John W. Mitchell, Frank A. E. Hamilton)	"
Hansford & Dalglish (Jefrey E. Hansford, C. Norman Dalglish)	"

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C. M. BROWN

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Hugg, J. B.	"	Macdonald, Fletcher A.	"
Huggard & Huggard (J. T. Huggard, R. Huggard)	"	Macdonald, P. A.	"
Hull, Sparling & Sparling (W. F. Hull, J. K. Sparling, F. W. Sparling)	"	McKerchar, Morrissey & Masterman (D. W. McKerchar, W. S. Morrissey, Lawrence A. Masterman)	"
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Kennedy, Kennedy & Kennedy (W. W. Kennedy, (F. C. Kennedy, K. R. Kennedy)	"	McMurray, Davidson & Wheeldon (E. J. McMurray, J. F. Davidson, H. Wheeldon)	"
Kilbourne, R. Bruce	"	McPherson, Wilson & Brown (A. N. McPherson, LL.B., P. J. Wilson, LL.B., Chas. M. Brown) (See card above)	"
Koza, S. W.	"	McTaggart, Roderick M.	"
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Langdale, F. E.	"		

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Magnussen, R. A. W.	"
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Manning, R. A. C.	"
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Mondor, Jacques	"
Monkman & Barnardo (Albert Monkman, C. G. Barnardo)	"
Monteith, Fletcher & David (G. B. Monteith, E. A. Fletcher, A. C. David)	"
Moody, George.	"
Moore & Sutherland (T. K. Moore, A. J. Sutherland)	"
Moran, Anderson & Guy (E. Anderson, K.C., W. J. Moran, R. D. Guy, E. Frith, C. W. Chappell) (<i>See card p. 11</i>)	"
Morkin James I.	"
Morley, A. W.	"
Morosnick & Shinbane (Louis D. Morosnick, A. M. Shinbane)	"
Morrison A. S.	"
Morrison, Henry C.	"
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Munson, Allan, Haffner & Hobkirk (J. H. D. Munson, K.C., G. W. Allan, E. F. Haffner, A. A. Hobkirk)	"
Murray & Noble (Thos. J. Murray, W. M. Noble)	"
Murray, Robertson & Doyle (A. H. Stewart Murray, J. E. Robertson, Arthur M. Doyle)	Winnipeg
Nason & Major (Henry Nason, W. J. Major)	"
Newberry, Wm. F.	"
Noble & Devaux (R. M. Noble, J. L. Devaux)	"
Phillips, Rogers & Scarth (H. Phillips, C. S. A. Rogers, H. S. Scarth)	"
Pitblado, Hoskin, Grundy, Bennest & Haig	
Pitblado, Hoskin, Montague & Drummond-Hay (Isaac Pitblado, K.C., LL.B., A. Erskine Hoskin, K.C., B.C.L., H. P. Grundy, E. H. Bennest, John T. Haig, P. J. Montague, H. R. Drummond-Hay, W. F. Guild) (<i>See card p. 11</i>)	"
Reynolds, Chas. E.	"
Richards, Sweatman, Kemp & Fillmore (S. E. Richards, W. A. T. Sweatman, A. G. Kemp, W. P. Fillmore)	"
Richardson, Charles L.	"
Richardson, W. W.	"
Ross, Williams & O'Grady (A. M. S. Ross, E. K. Williams, John M. de C. O'Grady)	"
Rothwell, Johnson, Bergman & McGhee (S. J. Rothwell, Thomas Johnson, H. A. Bergman, G. W. McGhee)	"
Royal, C. Henri	"
Rutherford, H. S.	"
Saunderson, H. H.	"
Sharpe, Stacpoole, Elliott & Montague (E. E. Sharpe, D. A. Stacpoole, L. J. Elliott, F. F. Montague)	"
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Smith, L. D.	"
Sproule & Locke (F. R. Sproule, P. C. Locke)	"
Steinkopf & Bruce (Max Steinkopf, Robt. A. Bruce)	"
Stevenson, John A.	"
Suffield & Gorsey (J. D. Suffield, Walter Gorsey)	"

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Tench, Henry, Carey & Mills (H. F. Tench, H. R. L. Henry, L. J. Carey, E. W. R. Mills)"	Thornburn & Darrach (Wm. Thornburn, A. V. Darrach)"
Teskey, Mark H."	Van Hallen, G. S."
Thomas & Honeyman (E. J. Thomas, E. D. Honeyman)"	Warner & Evans (Albert H. Warner, Albert E. A. Evans)"
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	Wilson, H. G."
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F. A. McCULLY, K.C.

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Dysart A. Allison.Buctouche	Michaud, J. E., B.A., LL.B. (See card, p. 12)"
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Richard, E. ReneDalhousie	
Chapman, Albert J.Dorchester	
Chapman, Allen W."	

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Peters, Fred. H.	"	Campbell, J. Roy, K.C.	"
Rainsford, Henry B.	"	Conlon, L. A.	"
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Kertson, W. Frederick	"	Hartt, J. T.	"
Keefe, John M.	"	Inches & Hazen (C. F. Inches, D. K. Hazen).	"
Hayward, M. L.	Hartland	Jarvis, W. M.	"
Allen, Austin A. (See card, p. 12).	Moncton	Keith, Heber S.	"
Friel & Clark (James Friel, Collingwood Clark).	"	Kelley, J. King, K.C.	"
Girouard, Edouard.	"	Kerr, Francis.	"
Goodwin, T. T.	"	Knowlton, F. J. G.	"
Hewson, Robert W., K.C.	"	Lewin, J. D. P.	"
Knight, James M.	"	Logan G. Earle	"
Leger, Antoine J.	"	McAlpine, E. H., K.C.	"
McCully, Frank A., K.C.	"	McDonald, Chas. A.	"
(See card, p. 70)	"	McInerney & Trueman (H. O. McInerney, J. MacM. Trueman).	"
Reilly, E. A., K.C.	"	McLean, C. H.	"
Robinson, C. W.	"	MacRae, Sinclair & MacRae. (J. A. Sinclair, K. J. Mac- Rae).	"
Sherren, James C.	"	McSorley, Geo.	"
Sweeney, F. J.	"	Mahoney, Wm. J.	"
Creaghan, John A.	Newcastle	Mullin, D., K.C.	"
Davidson, Allan A.	"	Nelson, Wm. A.	"
Whalen, T. H.	"	Otty, G. Dickson.	"
Williston, E. P.	"	Palmer, Stephen W.	"
Yeomans, J. H.	Petitcodiac	Pickett, H. H., B.C.L.	"
Hutchinson, G. A.	Richibucto	Porter, Horace A.	"
Robidoux, Ferd. J.	"	Powell & Harrison (H. A. Powell, K.C., W. H. Har- rison)	"
Dixon, M. B., K.C.	Riverside	Puddington, H. F.	"
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Powell, Bennett & Trites (H. A. Powell, K.C., A. W. Ben- nett, R. Trites).	"	Quigley, R. F.	"
Cockburn, Melville N., K.C.	St. Andrew's	Raymond, E. P.	"
Grimmer, F. Howard, K.C.	"	Regan, T. P.	"
Alward, Silas, K.C.	St. John	Ring, Oscar	"
Armstrong, B. R.	"	Ritchie, E. S.	"
Baird, Alex. W.	"	Rive, R. M.	"
Barnhill, Ewing & Sanford (A. P. Barnhill, K.C., W. A. Ewing, K.C., Chas. F. San- ford).	"	Robertson, H. W.	"
Barry, J. A.	"	Shaw, George S.	"
Baxter, John B. M., K.C. (See card p. 48)	"	Skinner, S. A. M.	"
Bedell, A. Rankin	"	Smith, Bowyer S.	"
Belyea, Geo. H. V.	"	Smith, H. Lester	"
Belyea, John C.	"	Smith, H. J.	"
		Tait, J. Starr.	"
		Teed, M. & J.	"
		Tilley, Leonard P. D., K.C.	"
		Wallace, Wm. B., K.C.	"

Weldon & McLean (H. H. McLean, K.C., Fred R. Taylor, K.C.) (<i>See card, p. 48</i>)	St. John	McFadzen, J. H.	Sussex
Weyman, Edw. C.	"	McIntyre, J. M.	"
Willett, John, K.C.	"	Pearson, A. E.	"
Wilson, Kenneth A.	"	Carvell, F. B., K.C.	Woodstock
Clarke, George J.	St. Stephen	Comben, Chas.	"
Mills, N. Marks	"	Connell, A. B., K.C.	"
Richardson, J. W.	"	Connell, E. K.	"
Stevens, Jas. G., jun.	"	Connell, Wm. M.	"
McDonald, E. R.	Shediac	Hartley, J. C., K.C.	"
McQueen, James	"	Hartley R. Perley	"
Porrier, Hon. Pascal	"	Jones, Chas. J.	"
Adair, G. H.	Sussex	Jones, T. M.	"
Fowler & Freeze (George W. Fowler, K.C., Ralph St. J. Freeze)	"	Jones, W. P., K.C.	"
Freeze, J. Arthur	"	Ketchum, T. C.	"
		Simms, Robert L.	"
		Vince, A. N.	"
		Winslow, J. Norman W.	"
		Young, Louis E.	"

NOVA SCOTIA

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Donkin, W. F.	"	Miller, O. S.	"
Logan, McKenzie & Smiley (H. J. Logan, K.C., C. T. McKenzie, K.C. J. S. Smiley)	"	Morse, Albert	"
Mackenzie, Alex. G.	"	Morse, H. C.	"
Manning, W. McC.	"	Ruggles, T. D. & Sons (E. Ruggles, K.C., H. Ruggles)	"
Ralston Hanway & Parker (J. L. Ralston, K.C., J. A. Hanway & E. T. Parker)	"	Dennison, Harry L., K.C.	Digby
Rhodes, E. N., K.C.	"	Jones, Frank, K.C.	"
Rogers, H. W.	"	Nichols, Frank W.	"
Rogers, Milner & Purdy (T. S. Rogers, K.C., F. L. Milner, H. A. Purdy, L. E. Ormond)	"	Carroll, W. F.	Glace Bay
Smith, C. R. & R. K.	"	Douglas, John C.	"
Smith, J. T.	"	Forbes, E. McK.	"
Sterne, George H.	"	Harrington Gordon S.	"
Harris, Fred W.	Annapolis Royal	McArthur, N. R.	"
Owen & Owen (J. M. Owen, Daniel Owen)	"	McDonald, A. J.	"
Chisholm, C. P., K.C.	Antigonish	Floyd, D. P.	Guysborough
Chisholm, D. C.	"	Fulton, J. A.	"
Chisholm, W., M.P., K.C.	"	Allison, Edmund Powell, K.C.	Halifax
Girroir, E. L.	"	Barss, W. de W.	"
Griffin, R. R.	"	Bell, F. H., K.C.	"
McDonald, Allan	"	Bligh, F. P.	"
McIsaac, C. F., K.C.	"	Cahalane, T. J.	"
Wall, James M.	"	Cluney, Andrew, K.C.	"
Cameron, Allan J.	Arichat	Covert & Pearson (W. H. Covert, K.C., G. F. Pearson)	"
Jones, F., K.C.	Bear River	Cummings, Alfred G.	"
		Davidson, F. L. (<i>See card, p. 12</i>)	"
		Davidson, J. M.	"
		Doyle, Ernest F.	"
		Eaton, Brenton H.	"
		Finn, R. E.	"

Foster & Foster (W. R. Foster)	Halifax
Geldert, J. M.	"
Henry, Rogers, Harris & Stewart (W. A. Henry, K.C., R. V. Harris, T. S. Rogers & James McG. Stewart)	"
Hunt, J. Johnstone, K.C. (See card, p. 13)	"
Jenks, Stuart, K.C.	"
Jones H. T.	"
King, Edwin D.	"
Knight, J. A., K.C.	"
LeNoir, M. U.	"
Lovett L. Arthur	"
MacCoy, W. B., K.C. (See card, p. 13)	"
MacIreith & Tremaine (R. T. MacIreith, C. F. Tremaine)	"
McInnes, Mellish, Fulton & Kenny (Hector McInnes, K. C. H. Mellish, K.C., W. H. Fulton, J. B. Kenny)	"
Maclean, Paton, Burchell & Ralston (A. K. Maclean, K.C., Vincent J. Paton, K.C., Chas. J. Burchell, K.C., J. L. Ralston, K.C.)	"
Mahon, H. E.	"
Meagher, T. J. N.	"
Morrison, A. G., K.C.	"
Murphy, J. W., K.C.	"
Murray & MacKinnon (Robt. H. Murray, John L. MacKinnon)	"
Nichols, Geo. E. E.	"
Notting, Thomas.	"
Oakes, Ingraham.	"
O'Connor, O'Mullin & Russell (Wm. F. O'Connor, K.C., John C. O'Mullin, LL.B., Bernard W. Russell, B.A., LL.B.)	"
O'Hearn, Walter J., K.C.	"
O'Mullin, John C. (See card, p. 13)	"
Owen, D. M.	"
Payzant, J. Y. & Son (J. Y. Payzant, K.C., W. L. Payzant)	"
Power, J. J., K.C.	"
Redmond, James A.	"
Ritchie, Geo.	"
Roper, John S.	"
Ross, John T., K.C.	"
Ross, Hon. Wm. B., K.C.	"
Silver & McDonald (Alfred E. Silver, K.C., Jas. A. McDonald, K.C.)	"
Ternan, Gerald B., LL.B.	"
Terrell, James.	Halifax
Thompson, W. E.	"
Thomson & Thomson (W. J. Thomson, W. J. C. Thomson)	"
Tobin, T. F., K.C.	"
Tremaine, Fredk. J., K.C.	"
Walsh, W. W.	"
Whitman, Alf.	"
Gallant, Thomas	Inverness
McNeil, D., K.C.	"
MacEchen, F. A.	"
MacKay, J. G.	Judique North
Masters, F. A.	Kentville
Roscoe & Roscoe (W. E. Roscoe, K.C., D.C.L., B. W. Roscoe, LL.B.)	"
Shaffner & Outhit (W. P. Shaffner, J. Frank Outhit)	"
Webster, B., K.C.	"
Wickwire, H. H., K.C.	"
Hall & Purney (W. L. Hall, W. P. Purney)	Liverpool
Mack, J. M.	"
Pyke, J. G.	"
Chesley, S. A., K.C.	Lunenburg
Kaulbach, R. C. S.	"
Lane, C. W., K.C.	"
Matheson D. F., K.C.	"
Davidson, A. L.	Middleton
Parsons, Wm. G., K.C.	"
Sedgwick, J. A.	Musquodoboit
Doull, John.	New Glasgow
Fitzpatrick, H. K.	"
Graham, R. H.	"
Jennison, H. V.	"
Sinclair, D. C.	"
Sinclair, J. H.	"
Archibald, Blowers, K.C.	North Sydney
Butts, R. H.	"
McDONALD, JOHN A.	"
McDonald, Joseph	"
Mackenzie & MacMillan (D. D. MacKenzie, N. A. MacMillan)	"
Fullerton, V. B.	Parrsboro
Dickson, Wm. A.	Pictou
Macdonald, Ives & Chipman (E. M. Macdonald, K.C., W. B. Ives, K.C., F. B. A. Chipman)	"
McDonald, Wm.	"
McLeod, John D., K.C.	"
Ross, J. U., K.C.	"
Tanner & McKay (C. E. Tanner, K.C., John W. Mackay)	"
Forsyth G. O., K.C. Port Hawkesbury	
MacLennan, Daniel, K.C.	Port Hood
MacLennan, Donald	"

Tremain, E. D.	Port Hood	Dickie, H. A.	Truro
Kyte, Geo. W., K.C.	St. Peter's	Ferguson, W. M.	"
Hood, John	Shelburne	McLatchy, H. O.	"
Swanburg, Angus N.	"	McLellan, S. D., K.C.	"
White & Blanchard (N. W.		Putnam, Harold.	"
White, K.C., F. C. Blan-		Schurman, R. U.	"
chard)	"	Tremain, Rufus A., K.C.	
McDougall, J. L.	Strathlorne	(See card, p. 48)	"
Burchell, McIntyre & Smith		Vernon, Gilbert H., K.C.	"
(C. J. Burchell, K.C., A. A.		Mackay, Henry S.	Westville
McIntyre, F. D. Smith)	Sydney	Grierson, J. A.	Weymouth
Crowe & Ross (W. Crowe,		Christie, W. M., K.C.	Windsor
K.C., Hugh Ross, K.C.,		Martell, L. H.	"
Ronald McVicar, John		Morse, E. J.	"
MacNeil)	"	Sangster, H. W.	"
Duchemin, H. P.	"	Scott, H. P.	"
Gillies & Hill (J. A. Gillies,		Sutherland, W. D.	"
K.C., W. A. G. Hill)	"	Tremain, H. B.	"
Gunn, A. D.	"	Crawley, E. S.	Wolfville
Hearn, D. A.	"	Wallace, J. W.	"
Langille, R. M.	"	Chipman & Sanderson (Lewis	
McDonald, F.	"	Chipman, K.C., C. L. San-	
McDonald, L. X.	"	derson)	Yarmouth
MacKenzie, Colin.	"	Clements, E. N.	"
Rowlings, G. A. R.	"	Landry & Cameron (R. W.	
Armstrong, W. B.	Truro	E. Landry, J. J. Cameron)	"
Campbell, A. J.	"	McKay C. Curtis.	"
		McKay, R. S.	"

ONTARIO

Mackinnon, A. J.	Acton	Boys & Murchison (W. A.	
Macdonald, Donald	Alexandria	Boys, K.C., D. C. Murchison)	Barrie
Macdonell & Costello (J. A.		Cowan, A.	"
Macdonell, K.C., F. T.		Creswicke & Bell (W. A. J.	
Costello)	"	Bell, K.C.)	"
Munro, M.	"	Radenhurst, Geo. A.	"
Bell & Brown (W. A. J. Bell,		Ross, Donald	"
G. E. J. Brown)	Alliston	Stewart, D. M.	"
Greig & Greig (P. A. Greig),	Almonte	Strathy & Esten (G. H. Esten)	"
Stafford, W. H.	"	Roach, M. H.	Beaverton
Davis, Fred. H. A.	Amherstburg	Butler, Ed. J.	Belleville
Hough, F. A.	"	Flint, J. J. B.	"
Kenrick, Edward	Ancaster	Fraleck & Abbott (E. B. Fra-	
Fitzgerald, W. E.	Arkona	leck, A. Abbott)	"
Burwash, Arthur.	Arnprior	Masson, Stewart, K.C.	"
Grout, T. H.	"	Mikel & Stewart (W. C. Mikel,	
Thompson, J. E.	"	K.C., D. E. K. Stewart	"
Slattery, R. J.	"	Northrup & Ponton (W. B.	"
Kearns, John McK.	Arthur	Northrup, K.C., M.P., W. N.	
Beale, Thos. R.	Athens	Ponton, K.C., R. D. Pon-	
Lennox & Chopin (T. H. Len-		ton)	"
nox, K.C., H. E. Chopin)	Aurora	O'Flynn, Diamond & O'Flynn	
Widdifield, C. Watson.	"	(F. E. O'Flynn, W. J. Dia-	
Barnum, W. H.	Aylmer	mond, E. D. O'Flynn).	"
Haines, Alfred E.	"	Porter & Carnew (E. Guss	
Miller & Backus (E. A. Miller		Porter, K.C., M.P., Wm.	
A. H. Backus)	"	Carnew, C. A. Payne)	"

Shorey, W. D. M. Belleville
 Wallbridge, F. S. "
Wills, J. F. "
 Wright, M. "
 Gosnell & Shillington (R. L. Gosnell, P. S. Shillington). Blenheim
 McArthur, G. J. Blind River
 Hickey, W. R. Bothwell
 McLean, Evan H. Bowmanville
 Simpson, D. B., K.C. "
 Senkles, E. S. "
 Johnson, T. Bracebridge
 Mahaffy, George "
 Evans, T. W. W. Bradford
 Scanlon, A. E. "
 Graham, E. G. Brampton
 Justin & Davis (B. F. Justin, K.C.) "
 Manning, J. J. "
 Morphy, W. S. "
 Pringle, R. H. "
 Baird, A. A. L., K.C. Brantford
 Bowlby, J. W., K.C. "
 Brewster & Heyd (W. S. Brewster, K.C., G. D. Heyd) "
 Charlton, W. M. "
 Harley & Sweet (J. Harley, K.C., E. Sweet, A. M. Harley) "
 Hollinrake, W. A., K.C. "
 Jones & Hewitt (S. A. Jones, K.C., H. S. Hewitt) "
 McEwen, Martin W. "
 Muir, M. F., K.C. "
Read, E. R. "
 Smith, Gordon J. "
 Tapscott, Chas. S. "
 Wade, T. S. "
 Watt, A. E., K.C. "
 Wilkes & Henderson (A. J. Wilkes, K.C., W. T. Henderson, K.C.) "
 Roach, M. H. Brechin
 Drewry, George Brighton
 Brown, M. M. Brockville
 Deacon, Chas. R. "
 Deacon, Jos., K.C. "
 Fulford C. C. "
 Hardy, A. C. "
 Hutcheson & Driver (James A. Hutcheson, K.C., Robert J. Driver) "
 Lewis & Fitzpatrick (W. A. Lewis, L. V. Fitzpatrick) "
 O'Brien, J. "
 Page, J. Albert "
 Stewart, H. A., K.C. "
 Peterson, N. H. Bruce Mines

Sinclair, Wm. M. Brussels
 Cleaver & Cleaver (E. H. Cleaver, Hughes Cleaver) Burlington
 Morrison, Wm. "
 Clay, Samuel Caire
 Arrell & Arrell (Harrison Arrell) Caledonia
 Humphries, I. A. Campbellford
 Lynch, D. J. "
 Payne, G. A. "
 McLaughlin & Co. Cannington
 French, F. J., K.C. (branch) Cardinal
 McIntosh, Colin Carleton Place
 McNeeley, J. S. L. "
 Patterson & Findlay (Robt. Patterson, G. H. Findlay) "
 Colter, R. S. Cayuga
 Arnold, S. B. Chatham
 Brackin & Bedford (R. L. Brackin, B. L. Bedford) "
 Coatsworth, C. S. "
Houston & Clark (Alex. Clark, E. Murray Reeve) "
Kerr & McNiven (J. G. Kerr, J. A. McNiven) "
 Lewis & Richards (O. L. Lewis, W. G. Richards) "
 McKeough, Wm. E. "
 Sayer, Geo. A. "
Scullard, Thos. "
 Smith, H. D. "
 Walker, J. A., K.C. "
Wilson, Pike & Stewart (M. Wilson, K. C., J. M. Pike, K.C., J. C. Stewart) "
 Mickle, C. J. Chesley
 Lawson & Cass (W. B. Lawson and W. J. Cass) Chesterville
 Brydone, W. Clinton
 Mahon, J. W. Cobalt
 Mitchell, G. "
 Ross, George "
Armstrong, A. J. Cobourg
 Boggs, F. D., K.C. "
 Field, F. M., K.C. "
 Hall, T. F. "
 Kerr, W. F. "
McColl, J. B. "
 Payne, Wm. L., K.C. Colborne
 Webb, F. L. "
 Allan, W. T. Collingwood
 Birnie, John, K.C. "
 Fair, R. E. "
 Robertson, Henry, K.C. "
 Chisholm, John A. Cornwall
 Danis, D. "
 Dingwall, Jas. "

- Gogo & Harkness (G. I. Gogo,
J. G. Harkness)Cornwall
MacLennan & Cline (C. H.
Cline)"
Milligan, J. C."
Primeau, J. A."
Smith, Alexander L."
Smith, Robt., K.C."
Stiles, Geo. A."
Bell & Brown (W. A. J.
Bell, K.C., G. E. J. Brown) Creemore
Kearns, John McKeown . . .Drayton
Weir, Geo. E.Dresden
Cowan, WalterDundalk
Lucas, Raney & Henery . . ."
Gwyn, H. C., K.C.Dundas
Knowles, W. E. S."
Lawrason, J. W."
Bradford & Bradford (S. H.
Bradford, K.C., Robt. Brad-
ford)Dunnville
Payne, J. C."
Robb, Walter T."
Telford, J. P.Durham
Kirkland S. C.Dutton
Lawson, W.Eganville
Cook, J. E.Elk Lake
Boys & MurchisonElmvale
Wissler, H.Elora
McDowell, W.Erin
Geddes, F. B.Essex
Carling, I. R.Exeter
Gladman & Stanbury (F. W.
Gladman, J. G. Stanbury). . ."
Wilson, J. A.Fergus
Cowan, Towers & Cowan . . .Forest
Croome, Norman L. . . .Fort Frances
George, A. D."
Murray, A. G."
Tibbetts, H. A."
Byers, D. R.Fort William
Byrnes & Byrnes (R. J.
Byrnes, Edmund F.
Byrnes)"
Dowler & Dowler
(W. A. Dowler, K.C.,
A. H. Dowler) (See
card, p. 13)."
Dyke, J. A."
Matheson, W. A."
Morris & Babe (F.
R. Morris, Fred Babe) . . ."
Morton, W. L."
Ross, J. C."
Swinburne, J. E."
Blake, J. R.Galt
Dalzell & Barrie (John B. Dal-
zell, Robt. Barrie)."
Hancock, John H."
Jamieson, J. M.Galt
Secord, M. A."
Carroll, Wm. B., K.C. . . .Gananoque
Jackson, J. A."
Elliott & Moss (J. E. Elliott
W. D. Moss)Glencoe
Cameron, M. G.Goderich
Dancey, L. E."
Garrow, Charles."
Hays, B. C."
Lewis, E. N."
Proudfoot, Killoran & Cooke
(Wm. Proudfoot, K.C., J.
L. Killoran, H. J. D.
Cooke)"
Seager, C."
Craig, John H.Gore Bay
McRae, W. F."
Titus, F. E."
McConachie, G. B.Grimsby
Buckingham, W. E.Guelph
Clark, S. R."
Dunbar, C. L."
Fisher, J. B."
Guthrie, Guthrie & Kirwin
(Hugh Guthrie, K.C., Patrick
Kirwin). (See card, p. 14) . . ."
Howitt & Howitt (H.
Howitt, J. R. Howitt). See
card, p. 14)."
Jeffrey, Nicol, K.C."
MacDonald, A. H., K.C. . . ."
McKinnon, R. L."
Maclean, Kenneth."
McLean, W. A."
Mowat, J. A."
Watt & Watt, (James Watt,
Frederick Watt). (See
card, p. 14)."
Lindsay, S. E.Hagersville
Day & Gordon (Fred. A.
Day, W. A. Gordon) . . .Haileybury
Elliot, F."
Graham, Kearney & Wright
(Edwin W. Kearney) . . ."
Hall, J. M."
McDougall, J. Lorne"
Slaght & Slaght (Arthur
G. Slaght, H. L. Slaght,
D. W. O'Sullivan)"
Smiley Frank L."
Ware, G. T."
Appelbe, E. F.Hamilton
Arrell & Arrell (Harrison and
S. Cameron Arrell)"
Ballard & Morrison (G. W.
Ballard, Wm. Morrison). . ."
Beasley & Beasley (A. C.
Beasley, J. D. Beasley) . . ."

Bell & Pringle (W. Bell, R. A. Pringle)	Hamilton
Biggar & Trealeven (S. D. Biggar, F. F. Trealeven)	"
Brown, A. W.	"
Bruce, Bruce & Counsell (A. Bruce, K.C., Ralph R. Bruce, J. L. Counsell)	"
Burkholder, C. E.	"
Cahill & Soule (E. D. Cahill, John H. Soule)	"
Carpenter & Morwick (Henry Carpenter & Howard Morwick)	"
Chisholm, Logie & McQuesten (James Chisholm, W. A. Logie, T. B. McQuesten)	"
Crerar & Awrey (T. H. Crerar, LeRoy E. Awrey)	"
Evans & Slater (W. T. Evans, Stanley H. Slater)	"
Farmer & Schelter (T. D. J. Farmer, J. L. Schelter)	"
Gallagher, E. E.	"
Gauld, Langs & Crosthwaite (John Gauld, K.C., Cecil V. Langs and Thos. Crosthwaite)	"
Gibson, Levy & Gibson (Sir John M. Gibson, G. N. Levy, A. Hope Gibson)	"
Haslett, Thos. C., K.C.	"
Hunter, J. J.	"
Jones, J. W.	"
Kerr & Thompson (Geo. S. Kerr, Geo. C. Thomson)	"
Lazier & Lazier (S. F. Lazier, K.C., E. Lazier, Harold Lazier)	"
Lee, Farmer & Simpson (Lyman Lee, J. G. Farmer, T. H. Simpson)	"
Lees, Hobson, Lees, Peat, Telford & McBride (Wm. Lees, K.C., Thomas Hobson, K.C., John M. Telford, Oswald, D. Peat, Herbert S. Lees, Robert P. McBride)	"
Lewis & Schwenger (A. M. Lewis and Wm. F. Schwenger)	"
McBrayne & Brandon (W. S. McBrayne, Wm. Brandon)	"
McClermont, W. M.	"
Malone, Martin	"
Martin & Martin (Kirwan Martin, D'Arcy Martin)	"
Mewburn, Ambrose Burbidge & Marshall (Sydney C. Mewburn, E. H. Ambrose, H. A. Burbidge, John R. Marshall)	Hamilton
Morris, P. R.	"
O'Heir & Morison (Arthur O'Heir, Frank Morison)	"
O'Reilly, M. J., K.C.	"
Petrie, H. D.	"
Robinson, H. S.	"
Ross, W. L.	"
Shaver, W. Victor	"
Sloan, Thos. R.	"
Staunton, G. L., K.C.	"
Stephens & McKenna (L. F. Stephens, Hugh J. McKenna). (<i>See card, p. 14</i>)	"
Waddell, F. R.	"
Wardrope, W. H., K.C.	"
Washington & Martin (S. F. Washington, F. R. Martin)	"
Campbell & Shannon (J. H. Shannon)	Harriston
Humphries, I. A.	Hastings
Ghent, C. A.	Havelock
Lawlor, H. W. (<i>See card, p. 15</i>)	Hawkesbury
Grant, Donald M.	Huntsville
Wilgress, G. S.	"
Hegler, J. C., K.C.	Ingersoll
Paterson, J. L.	"
Walsh, Michael, K.C.	"
Wells, Thomas, K.C.	"
Davy, G. H.	Iroquois
Allan, Thos. K.	Kemptville
Ferguson, G. H.	"
Allan, J. S.	Kenora
Kinney, J. A.	"
MacGillivray, J. F., K.C.	"
Macpherson, J. A.	Kincardine
Malcolmson, P. A.	"
Stewart, R. J.	"
Cunningham, A. B.	Kingston
Givens, D. A.	"
King & Smythe (Francis King, Geo. H. Smythe)	"
Macdonnell, G. M.	"
Macnee, Jas. H.	"
Mundell, Wm.	"
Nickle & Farrell (Wm. F. Nickle, Jas. A. Farrell)	"
Rigney, T. J.	"
Strange, John	"
Sullivan, W. H.	"
Walkem & Walkem (Joseph B. Walkem)	"
Webster, Chas. R.	"
Whiting, J. L., K.C.	"

Goodeve, G. S.	Kingsville	Graydon & Graydon (N. P. Graydon, H. M. Graydon) .	London
Smith, W. A.	"	Greenlees, Andrew	"
Bitzer, A. L.	Kitchener	Greenlees, F. H.	"
Bowlby, D. S.	"	Griffiths, S. F.	"
Clement & Clement (E. P. Clement, K.C., E. W. Clement, W. P. Clement, L.L.B.)	"	Ivey & Ivey (C. H. Ivey, Rich. H. Ivey)	"
Millar, Sims & Gregory (A. Millar, K.C., H. J. Sims, W. H. Gregory)	"	Jarvis & Vining (C. G. Jarvis, Jared Vining)	"
Scellen & Weir (J. A. Scellen, J. J. A. Weir)	"	Jeffery, A. O., K.C.	"
Langley, O. A.	Lakefield	Jeffrey, Edgar	"
Stewart, Wm.	Lancaster	Johnston, E. H.	"
Easton, W. T.	Leamington	McDonagh, M. P.	"
Furlong & Awrey (E. C. Awrey, W. H. Furlong)	"	McEvoy, John M.	"
(See card, p. 20)	"	McKillop, Murphy & Guan (James B. McKillop, Thos J. Murphy, John M. Gunn. (See card, p. 15)	"
Bradford, Jesse	Lindsay	Macpherson & Perrin (J. Macpherson, F. E. Perrin)	"
Knight, Leigh R.	"	Meredith & Fisher (Thos. G. Meredith, K.C., Robt. G. Fisher)	"
McLaughlin Fulton Stinson & Anderson (R. J. McLaughlin, K.C., A. M. Fulton, T. H. Stinson, J. E. Anderson)	"	Meredith & Meredith (Edmund Meredith, K.C., W. R. Meredith)	"
Moore & Jackson (F. D. Moore, K.C., Alex. Jackson)	"	Purdum & Purdom (T. H. Purdom, K.C., A. Purdom)	"
O'Connor, L. V.	"	Scandrett, Thos. W.	"
Stewart & Scott (Thomas Stewart, S. M. Scott)	"	Scatcherd, E. W.	"
Weldon, I. E.	"	Tennent & Tennent (D. H. and Gordon H. Tennent)	"
Bray, George	Listowel	Tooth, R. M. C.	"
Hamilton, J. Cecil. (See card, p. 15)	"	Winnett, J. W. G.	"
Morphy, H. B., K.C.	"	Hall, W. S.	L'Orignal
Terhune, J. E.	"	Maxwell, John	"
Atkinson, Charles R.	Little Current	Proulx, Edmond, M.P.	"
Bartlett, P. H.	London	Malcomson, P. A. (Branch) .	Lucknow
Bartram, W. G. R.	"	Cross, W.	Madoc
Bayly & Bayly (Richard Bayly, K.C., R. A. Bayly)	"	Stewart, D. E. K.	"
Beattie, J. H. A.	"	Lucas, Raney & Henry (Hon. I. B. Lucas, K.C., W. E. Raney, K.C., W. D. Henry) .	Markdale
Buchner, U. A.	"	McCullough, P.	"
Chisholm, A. G.	"	Douglas & Gibson (Wm. Douglas, Robt. J. Gibson) .	Markham
Cronyn, Betts & Coleridge (V. Cronyn, L.L.B., F. P. Betts, K.C., Thos. Coleridge)	"	Robinson, W. A.	"
Elliot, H. B., K.C.	"	Wilson, A. F.	"
Essery, E. T., K.C.	"	McDonald, A. A.	Marmora
Faulds, J. F.	"	Wills, J. F., K.C.	"
Fitzgerald, Wm. C.	"	Albery, Geo. G.	Meaford
Flock & Flock (J. H. Flock, K.C., E. W. M. Flock)	"	Barlow, James P.	"
Fraser & Moore (M. D. Fraser, K.C., J. P. Moore, K.C.)	"	Wilson, John S.	"
Gibbons, Harper & Gibbons (Sir Geo. Gibbons, Fred. F. Harper, Geo. S. Gibbons)	"	Bennett, W. H., K.C.	Midland
		Finlayson, W.	"
		Grant, F. W.	"
		Storey, D. S.	"
		Ruddy, R., K.C.	Millbrook
		Smith, A. A.	"

- Braden, J. A. E. Milton
 Dick, W. I. "
 Thompson, F. H., K.C. Mitchell
 Flynn, Arthur. Morrisburg
 Hilliard, Irwin "
 Lyle, R. F. "
 Clarke & Moon Mount Forest
 Kilgour, Robert O. "
 Perry, W. C. "
 English, John Napanee
 German, T. B. "
 Herrington, Warner & Grange
 (W. S. Herrington, K.C., W.
 A. Grange). "
 Madden, J. E. "
 Preston, D. H., K.C. "
 Ruttan, G. F., K.C. "
 Wilson, U. M. "
 Wilson, W. G. "
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 Knox, P. J. New Liskeard
 Pumaville, M. F. "
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 White D. Budd. "
 Brady, G. R. North Bay
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 McDonald, J. H. "
 McGaughey, C. S. "
 McGaughey, G. A. "
 McKee, T. E. "
 McNamara, J. M. "
 Valin, H. R. "
 Chisholm, W. A. Oakville
 Hughson, A. A. Orangeville
 Irwin, W. N. "
 Island, John L. "
 McKeown, C. R. "
 Robb, George "
 Evans, F. G. Orillia
 Hammond, J. H. "
 Mulcahy, J. T. "
 Robinson, S. S. "
 Thompson, A. B. "
Tudhope, Melville B., B.A.
 (See card, p. 15). "
 Conant, G. D. Oshawa
Grierson, John F. "
 Morphy, H. E. "
 Sinclair, W. E. N. "
Aylen & Duclos (H. Aylen,
 K.C., A. W. Duclos, K.C.) . Ottawa
 Beament & Armstrong (Thos.
 A. Beament, A. H. Arm-
 strong) "
Belcourt, Ritchie, Chevrier
& Leduc (N. A. Belcourt,
 L.L.D., K.C., Hon. John A.
 Ritchie, E. R. E. Chevrier.
 Paul Leduc). "
 Blanchet, C. A. E. "
 Boutet, Bernardin "
 Bradley, R. A. "
Bray & Retallack (Chas. L.
 Bray, Norman McK. Retal-
 lack). "
 Caron & Labelle (J. B. T. Ca-
 ron, J. P. Labelle) "
 Carss, J. Ogle "
 Champagne, Nap. "
Chrysler & Higgerty (F. H.
 Chrysler, K.C., F. E. Hig-
 gerty). (See card, p. 16) "
 Code & Burritt (R. G. Code, E.
 F. Burritt) "
 Craig Arthur C. "
Daly, E. J. "
 Ewart, Scott, Maclaren & Kelley
 (J. E. Ewart, K.C., W. L.
 Scott, C. H. Maclaren, Geo. D.
 Kelley) "
Fetherstonhaugh & Co.
 (Fred. B. Fetherstonhaugh,
 K.C., Russel S. Smart, B.A.)
 (See card, p. 50). "
 Forward, A. J. "
 Fripp & McGee (A. E. Fripp, T.
 D'Arcy McGee) "
 Gleeson, E. P. "
 Goodwin, W. Joseph "
 Gorman, M. J., K.C. "
 Grace, Wilfrid J. "
 Graham, G. Duncan "
 Grant & McCarthy (Jno. C.
 Grant, Wm. C. McCarthy) "
Greene, Hill & Hill (Went-
 worth Greene, Hamnett P.
 Hill, Alexander C. Hill) "
 Greig, W. C. "
 Henderson, Gordon "
 Hick, Robert "
 Hogg & Hogg (W. D. Hogg,
 K.C., Fred D. Hogg) "
 Honeywell, Albert E. "
 Honeywell, Caldwell & Wilson
 (F. H. Honeywell, J. Ernest
 Caldwell, P. E. Wilson) "
 Kehoe & Gauvreau (Louis J.
 Kehoe, J. Wilfrid Gauvreau) "

Kidd, Geo. E.	Ottawa	Smith & Dunlevie (L. A.	
Kidd, W. J.	"	Smith, F. S. Dunlevie) . . .	Ottawa
Laberge, Edgar	"	Smith, J. J.	"
Lemieux, Auguste	"	Smith & Johnston (Alex.	
Lepine, Wm. H. E., B.C.L.		Smith, Wm. Johnston) . . .	"
(See card, p. 16).	"	Cameron, C. S.	Owen Sound
Lussier, A. E.	"	Creasor, A. D.	"
MacCracken, Henderson,		Dyre, T. H.	"
Greene & Herriage (John		Evans, R. W.	"
I. MacCracken, K.C., Geo. F.		Horning, J. A.	"
Henderson, K.C., A. W.		Kilbourn & Kilbourn (J.	
Greene, W. D. Herriage).		M. & F. H. Kilbourn). . .	"
(See card, p. 16).	"	Middlebro & Spereman	
MacDonnell, Geo. F.	"	(W. S. Middlebro, K.C.	
McDougall, Donald J.	"	E. C. Spereman) . . .	"
MacFarlane, A.	"	Tucker, H. G.	"
McGiverin, Haydon & Ebbs		Wright & Telford (W. H.	
(H. B. McGiverin, A. A.		Wright, W. P. Telford,	
Haydon, Jno. P. Ebbs) . . .	"	jun)	"
McLaurin & Millar (Geo. Mc-		Forrester, David	Paisley
Laurin, H. Millar)	"	Munro, W. N.	Palmerston
McVeity, Taylor	"	Layton, J. R.	Paris
Magee, Fredk.	"	Smoke & Smoke (Franklin	
May, Arch. F.	"	E. C. Spereman) . . .	"
Morley, Geo. W.	"	Smoke, K.C. Sheldon L. Smoke)	"
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(Hon. Chas. Murphy, Harold		Haight, W. L.	Parry Sound
Fisher, L. P. Sherwood) . .	"	Pirie & Stone (E. Pirie,	
Nellis, Thompson & Ellis (T.		H. E. Stone)	"
F. Nellis, J. T. C. Thompson)	"	Weeks & Jackson (J. P.	
O'Meara, J. J.	"	Weeks, G. B. Jackson) . .	"
Orde, Powell & Lyle (John F.		Burritt, Jas., K.C.	Pembroke
Orde, K.C., Montague G. Pow-		Forgie, J. G.	"
ell, Norman W. Lyle) . . .	"	Gallagan, T. J.	"
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Osborne, S. R. Broadfoot) .	"	Metcalf, J. R.	"
Parent, J. Alberic	"	Reeves, J. H.	"
Pedley, Frank	"	Supple, J. A.	"
Percival, H. A.	"	White & Johnson (Peter	
Perkins, Fraser & McCormick		White, K.C., H. B. John-	
(W. C. Perkins, A. W. Fra-		son).	"
ser, K.C., H. D. McCormick	"	White & Williams (Wm. R.	
Phillips, Rudolph	"	White, K.C., W. H. Wil-	
Pringle & Guthrie (Clive Prin-		liams, K.C., J. C. L. White) .	"
gle, N. G. Guthrie)	"	Hewson, W. H.	Penetanguishene
Pringle, Thompson, Burgess		Thompson, A. B.	"
& Cote (R. A. Pringle, K.C.,		Balderson, J. M.	Perth
A. T. Thompson, T. A. Bur-		Consitt, G. A.	"
gess, Louis Cote). See card,		Foy, Chas. J.	"
p. 17).	"	Hall, F. W.	"
Ritchie, John A.	"	Shaw, Alex. C.	"
Seguin & Sauve (Chas. A.		Stewart, Hope & O'Donnell (J.	
Seguin, Osias Sauve) . . .	"	A. Stewart, J. A. Hope, H. A.	
Sims, Richard J.	"	O'Donnell).	"
Sinclair, R. V., K.C. (See		Bennet & Goodwill (J. W.	
card, p. 16).	"	Bennet, J. E. L. Goodwill) Peterboro	
Smellie & Lewis (James F.		de Laplante, J. O.	"
Smellie, Allan C. T. Lewis)	"	Dixon, A. E.	"

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Gordon & Widdifield (G. N. Gordon, C. R. Widdifield)	"
Green, John	"
Hall & Hall (E. H. D. Hall, B. D. Hall)	"
Hall, R. R.	"
Hatton, G. W.	"
Langley, O. A.	"
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O'Connell, D.	"
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Mackenzie, R. G. R.	"
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Hubbs, Rich H.	"
Macnee, Peter Clark	"
Walmsley, Thos.	"
Young, E. M.	"
Cole, A. E.	Port Arthur
COWAN, D. J.	"
Keefer, Keefer & Towers (F. H. Keefer, K.C., F. Hugh Keefer)	"
Kenny, M. J.	"
Langworthy & McComber (W. F. Langworthy, K.C., A. J. McComber)	"
McBrady, W.	"
Reeve, John	"
Turville, W. D. B.	"
Kinnear, Louis	Port Colborne
Macdonald G. Smith	"
Burgess, W.	Port Elgin
Chisholm, D. H.	Port Hope
Smith, Seth S.	"
White, Henry	"
Crozier, John W.	Port Perry
Ebbels, Hubert L.	"
Harris, W. H.	"
Buck, C. Stuart	Port Rowan
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Halpin, P. K.	"
McCrea, Geo.	"
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Bowie G. S.	Rainy River
Chown & Geale (S. T. Chown, J. Geale)	Renfrew
McGarry & Costello (T. W. McGarry, K.C., T. M. Costello)	"
Stewart, E. J.	"
Wright, E. A.	"
Watson, O. K.	Ridgetown
Shaw, J. D.	Rodney
Ball, M. A.	St. Catharines
Bowman, C.	"
Brennan, M.	"
Burson, G. B.	"
Campbell, J. H.	"
Collier, H. H., K.C.	"
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Keyes, Jas. A.	"
Lancaster, E. H.	"
McCarron, M. J.	"
Marquis & Lane (A. W. Marquis, W. S. Lane, LL.B.) (See card, p. 17)	"
Peterson, G. F.	"
Ford, A. W.	St. Mary's
Graham, J. W.	"
Harstone, Leonard	"
Parkinson, A. E.	"
Brown, E. S.	St. Thomas
Cameron, W. K.	"
Davidson, John B.	"
Duncan, J. M.	"
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Grant, Andrew	"
Leitch, C. St. Clair	"
McConnell, R. H.	"
McCrimmon, A.	"
McCrimmon, M. D. (See card, p. 17)	"
Maxwell, C. F.	"
Robertson, J. S.	"
Sanders & Ingram (E. C. Sanders, A. A. Ingram)	"
Saunders, Torrance & Kingsmill (M. C. R. Depot)	"
Wickett, W. L.	"
Cowan, Towers & Cowan (J. Cowan, K.C., R. I. Towers, Stewart Cowan, John Cowan, jr	Sarnia
Hanna, Lesueur & McKinley (Hon. W. J. Hanna, R. V. Lesueur, A. I. McKinley)	"
Logan, John R.	"

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Weir, A.	"	Slaght, Slaght & Agar (T. R. Slaght, K.C., T. J. Agar) . . .	"
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Darling & Batson (J. L. Darling, Chas. A. Batson)	"	McEwen, John	"
Elliott, Andrew.	"	Sparham & McCue (B. E. Sparham, Wilson McCue)	" "
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Irving, J. Ewart. (See card above)	"	Hood, John	Stayner
McEwen, James	"	Sullivan, A. J. F.	"
McFadden & McMil- lan (U. McFadden, E. V. McMillan)	"	Thrasher, G. G.	Stirling
McNamara, V.	"	McCullough & Button (Jas. McCullough, F. L. But- ton)	Stouffville
McPhail & Brown (J. A. McPhail, W. E. Brown). (See card, p. 17)	"	Sangster, F. H.	"
Martin, F. J. S.	"	Blewett, F. R., K.C.	Stratford
O'Flynn & Goodwin (J. L. O'Flynn, Geo. Goodwin)	"	Harding, Owens & Goodwin (R. T. Harding, W. G. Owens, W. E. Goodwin) . . .	"
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Atkinson & Co. (T. R. At- kinson)	Simcoe	Roswell, J. W.	Streetsville
Curtis, Frank E.	"	Aubin J. Albert	Sturgeon Falls
Innes, Hugh P., K.C.	"	Phillion, J. A.	"
		Buchanan, G. E.	Sudbury
		Clary, J. H.	"
		Fowler, Joseph	"
		Lauzon Oswald	"
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McKessock & Miller (R. R. McKessock, K.C., G.M. Miller). (<i>See card, p. 18</i>)	"	Balfour & Parker (Gordon B. Balfour, Jas. Parker)	"
Meldrum, A. D.	"	Barton, Henderson & Kerr (T. H. Barton, C. B. Henderson, Stanley C. S. Kerr)	"
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Coutts, John	Thamesville	Beatty, Chas. W.	"
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Williams & Clement (T. E. Williams, K.C., F. A. Clement)	"	Beaumont, Robert B.	"
Battle, T. F.	Thorold	Beck, Harry T.	"
Wilson, F. W.	Tilbury	Bell, George.	"
Brown, W. C.	Tilsonburg	Bickford, E. H.	"
Carruthers, John	"	Biggar & Burton (C. R. W. Biggar, K.C., G. F. Burton)	"
Sinclair, V. A.	"	Biggs & Biggs (S. C. Biggs, S. P. Biggs, R. A. Biggs).	"
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Armstrong, A. Bosworth	"		
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Arnott, S. J.	"		
Aylesworth, Wright, Moss & Thompson (A. B. Aylesworth, K.C., Henry J. Wright, John H. Moss, K.C., Chas. A. Moss, J. A. Thompson, F. Aylesworth, H. L. Hoyles)	"		

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- Boulton, C. R.“
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- Bruce, Alex., K.C.**“
- Burk Arthur W.“
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- Campbell, Jos. H.“
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Douglas, Jno.	"
Dowdall, Richd. J.	"
Drayton, Philip H.	"
Duncan, Lewis	"
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Eastwood, John P.	"
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Foley, Frank J.	"
Ford, Wm. H.	"
Fowler, Henry F.	"
Fowler, Saml.	"
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Gibson, Goodwin	"
Gibson, Thos. A.	"
Gillis, Edward.	"
Goodman & Galbraith (Ambrose K. Goodman, Donald G. M. Galbraith)	Toronto
Grant, Wm. H.	"
Gray & Gray (G. Howard Gray, J. J. Gray)	"
Greene, C. H.	"
Gregory & Gooderham (W. D. Gregory, H. T. Gooderham)	"
Grier, A. Monro, K.C.	"
Hall, W. Carleill	"
Hall, Wm. H.	"
Harman, George F.	"
Hassard, Albert R.	"
Haverson, James, K.C.	"
Hearn, Edouard J., K.C.	"
Heighington & Shaver (A. C. Heighington, Geo. H. Shaver)	"
Hellmuth, Cattanaach & Meredith (Isidore F. Hellmuth, K.C., Ernest C. Cattanaach, John R. Meredith)	"
Henderson, Charles	"
Henderson & McGuire (David Henderson, W. H. McGuire)	"
Henderson & Ross (Wm. A. Henderson, Austin G. Ross)	"
Henderson, Small & Carrick (J. T. Small, K.C., James W. Carrick)	"
Herzlich Carl M.	"
Heward, Geo. C.	"
Heyd, Heyd, McLarty & Ironsides (L. F. Heyd, K.C., N. C. Heyd, Wm. J. McLarty, Erell C. Ironsides)	"
Hislop, Thos.	"
Hodges, Wm. H.	"
Hoffman, J. Hilton	"
Hoffman & McCarthy (J. Hilton Hoffman, W. Allan McCarthy)	"
Holden & Grover (John B. Holden, George A. Grover)	"
Holliss & Wilson (J. Fred Holliss, Thos. H. Wilson)	"
Holman, Chas. J., K.C.	"
Holmes, G. W.	"
Holmes & Morgan (Rich H. Holmes, Walter M. Morgan)	"
Honeyford, Richd.	"
Hood, Geo. W. P.	"
Hossack, D. C.	"
Hubbard, J. J.	"
Hughes, Frank J.	"
Hunter & Deacon (W. E. L. Hunter, G. P. Deacon)	"

Hunter & Hunter (W. H. Hunter, B.A., A. T. Hunter, LL.B.) (<i>See card, p. 18</i>)	Toronto
Hunter, R. G.	"
Jackes, Edwin H.	"
Jackes & Jackes (E. H. Jackes, C. B. Jackes)	"
Jameson & McHugh (David W. Jameson, Geo. P. McHugh)	"
Jennings & Clute (John Jennings, Arthur R. Clute)	"
Johnston, McKay, Dods & Grant (E. F. B. Johnston, K.C., Robert McKay, K.C., Andrew Dods, Gideon Grant)	"
Johnston, Wm.	"
Jones, F. C. L.	"
Jones, J. G.	"
Jones & Leonard (Beverley Jones, Chas. J. Leonard)	"
Kappele & Kappele (Chas. Kappele)	"
Kerr, Bull, Shaw & Montgomery (George Kerr, B. E. Bull, J. G. Shaw, Joseph Montgomery)	"
Kerr, Chas. W. & Co. (Chas. W. Kerr, Archibald Cochran)	"
Kerr, Davidson, Paterson & McFarland (J. K. Kerr, K.C., W. Davidson, J. A. Paterson, K.C., G. F. McFarland). (<i>See card, p. 18</i>).	"
Kilmer, Irving & Davis (G. H. Kilmer, John W. Irving, H. H. Davis)	"
King & King (Samuel King, Oscar H. King)	"
King & Sinclair (John King, K.C., D. L. Sinclair)	"
Kingstone, Symons & Co. (David T. Symons, K.C., Murray Gordon)	"
Kirkpatrick, W. H.	"
Laidlaw Wm., K.C.	"
Laing, John M.	"
Lamport & Ferguson (Wm. A. Lamport, H. M. Ferguson)	"
Lawrence & Dunbar (A. G. Fred. Lawrence, Ferguson J. Dunbar)	"
Leask, David R.	"
Lee & O'Donoghue (W. G. T. Lee, J. G. O'Donoghue)	"
Lefroy, A. H. Fraser.	Toronto
Lennox & Lennox (T. Herbert Lennox, John F. Lennox)	"
Le Vesconte, R. C.	"
Lewis, Albert R.	"
Livingston Chas. W.	"
Loftus, Jno. T.	"
Lown, Alex. S.	"
McBrady & O'Connor (L. V. McBrady, K.C., John R. O'Connor)	"
McBride, James	"
McCallum, Wm. J.	"
McCarthy & McCarthy (Leighton McCarthy, K.C., D. L. McCarthy, K.C., Frank McCarthy, Wilfrid M. Cox) (<i>See card, p. 19</i>)	"
McCullough, J. W.	"
McDonald, W. J.	"
McGhie & Keeler (J. H. McGhie, A. J. Keeler)	"
MacInnes, C. S., K.C.	"
McKay, Wm. C.	"
McKeown, S. W.	"
McLaughlin, Johnston & Moorhead (R. J. McLaughlin, R. L. Johnston, R. D. Moorhead)	"
McMaster, Montgomery, Fleury & Co. (A. C. McMaster, John D. Montgomery, W. J. Fleury, R. G. Agnew, A. Cochrane, A. Gilmour)	"
McMichael, A. F.	"
McPherson & Co. (Wm. David McPherson, K.C., M.P.P., W. B. McPherson, B.A. Sc.)	"
McWhinney & Brown (W. J. McWhinney, K.C., E. Percival Brown)	"
Macdonald, Charles E.	"
Macdonald, Donald	"
Macdonald, Garvey & Rowland (W. H. Garvey, J. A. Rowland)	"
Macdonald, Hugh John. (<i>See card, p. 19</i>)	"
MacDonald, H. C.	"
Macdonald J. A., K.C.	"
Macdonald, Shepley, Donald & Mason (J. H. Macdonald, K.C., G. F. Shepley, K.C., R. C. Donald, G. W. Mason)	"
MacDonald, Shepley, Donald & White (J. H. MacDonald, K.C., G. F. Shepley, K.C., R. C. Donald, H. S. White)	"

Macdonald & MacIntosh (George S. Macdonald, John A. MacIntosh)	Toronto
Macdonell & Boland (A. C. Macdonell, W. J. Boland)	"
MacGregor, Alexander	"
Macgregor & McGregor (Jas. P. Macgregor, John P. Mc- Gregor)	"
MacINNES, CHAS. S.	"
Mackay, W. C.	"
Mackenzie, Ernest C.	"
Mackenzie, H. Gordon	"
Macklem, O. R. & H. C.	"
Maclean & Constable (T. W. MacLean, D. L. Constable)	"
MacMurchy & Spence (An- gus MacMurchy, K.C., John D. Spence, A. G. Campbell)	"
MacNaughton, A. Cameron	"
Male W. Harold	"
Malone, Malone & Long (E. T. Malone, K.C., A. L. Malone, E. G. Long)	"
Martin, Clara Brett	"
Martin & Evans-Lewis (Henry J. Martin, Chas. Evans- Lewis)	"
Martin, Samuel S., jr.	"
Mearns & Carr (F. S. Mearns Wm. L. Carr)	"
Meek, Ed., K.C.	"
Mercer & Bradford (M. S. Mer- cer, S. H. Bradford)	"
Millar, Ferguson & Hunter (C. Millar, W. N. Ferguson, A. W. Hunter)	"
Mills, Raney, Hales & Irwin (G. G. Mills, W. E. Raney, Alex. Mills, J. Hales, Fred. Irwin)	"
Milne, J. A.	"
Montgomery & Montgomery (Robert A. and Wm. S. Montgomery)	"
Morine & Morine (Alfred B. Morine, K.C., A. Nevill Mo- rine)	"
Morris & Roach (Elihu G. Morris, Guy R. Roach)	"
Morris, Wm.	"
Moses, H. Reginald	"
Mulock, Milliken, Clark & Redman (Wm. Mulock, Wm. B. Milliken, Herbert A. Clark, Henry E. Redman, Harold W. Shapley) (<i>See</i> <i>card, p. 19</i>)	"
Mowat, Maclellan & Parkin- son (H. M. Mowat, R. J. Maclellan, H. F. Parkin- son)	Toronto
Murphy & Donald (Wm. K. Murphy, jr., Hugh H. Do- nald)	"
Nason, Jos.	"
Naughton, J. N.	"
Nesbitt A. Russell	"
Newman, Geo. E.	"
O'Brien, J. B.	"
O'Brien & Lundy (H. O'Brien, J. S. Lundy, C. Robinson, K.C.)	"
O'Donoghue, Daniel J.	"
Obee, Harvey	"
Ogden & Bowlby (Albert Ogden, A. T. Bowlby)	"
Osler, Hoskin & Harcourt (H. S. Osler, J. H. Hoskin, K.C., LL.D., F. W. Har- court). (<i>See card, p. 83</i>)	"
Owens, Proudfoot & Mac- donald (E. W. J. Owens, K.C., Wm. A. Proudfoot A. A. Macdonald)	"
Parker & Clark (W. R. Perci- val Parker, Geo. M. Clark)	"
Parsons J. E.	"
Payne, J. Webber	"
Pearson, James	"
Phillips, Nathan	"
Plaxton, G. G.	"
Porter, Chas. H.	"
Poucher, Norman Y.	"
Price, Garvey & Co. (Wm. H. Price, Chas. M. Garvey)	"
Proudfoot, Duncan & Grant (Wm. Proudfoot, K.C., E. J. B. Duncan, W. H. Grant)	"
Raymond, Ross & Ardagh (W. B. Raymond, D. C. Ross, B. H. Ardagh)	"
Regan & Carruthers (Frank Regan, Chas. W. Carru- thers)	"
Reid, Robert A.	"
Reynolds, E. R.	"
Ridout & Maybee (J. Edward Maybee, M.E.)	"
Rielly, Fredk D.	"
Ritchie, George	"
Ritchie, Ludwig & Ballan- tyne (C. H. Ritchie, K.C., M. H. Ludwig, A. W. Ballan- tyne)	"
Roaf, James R.	"
Robertson, James E., K.C.	"

Robertson, MacLennan & Black (Donald Robertson, James J. MacLennan, John N. Black)	Toronto	Smith, L. C.	Toronto
Robinette, Godfrey & Phelan (T. C. Robinette, K.C., John M. Godfrey, Thos. N. Phelan)	"	Smith, Rae & Greer (J. F. Smith, K.C., G. L. Smith, R. H. Greer)	"
Robinson, Christopher C.	"	Smyth, W. R.	"
Rolph, Thos. T.	"	Smythe, Robert G.	"
Ross, Arthur G.	"	Snider & Bone (F. C. Snider, J. H. Bone)	"
Ross & Holmested (J. L. Ross A. W. Holmested)	"	Standish & Snider (Ira Stan- dish, Fletcher C. Snider) . . .	"
Rowan, Jones, Sommerville, Newman & Hattin (T. A. Rowan, J. E. Jones, N. Som- merville, H. A. Newman, Victor H. Hattin)	"	Starr, Spence, Cooper & Fraser (J. R. L. Starr, K.C., J. H. Spence, Grant Cooper, W. K. Fraser, R. P. Locke, L. C. Outerbridge) (<i>See card, p. 19</i>)	"
Rowell, Reid, Wood & Wright (N. W. Rowell, K.C., Thos. Reid, S. C. Wood, E. W. Wright, C. W. Thompson, J. M. Langstaff, E. G. McMillan, E. M. Rowand, D. B. Sinclair, M. C. Purvis). (<i>See card, p. 18</i>)	"	Stewart, A. M.	"
Royce, Henderson, & Boyd (Allan R. Royce, Robert B. Henderson, Arthur M. Boyd, J. R. O'Connor)	"	Stiles Cyrus	"
Ryckman & Mackenzie (E. B. Ryckman, K.C., Chas. W. Kerr, Christopher Macken- zie)	"	Strathly, Gerard B.	"
Saunders, Torrance & Kingsmill (Dyce W. Saun- ders, K.C., W. P. Torrance, W. B. Kingsmill)	"	Stuart, Hamilton J.	"
Schoff, Elgin	"	Summerhayes, W. F.	"
Scott, Henry J., K.C.	"	Sweeny, G. R.	"
Segsworth, R. F.	"	Taylor, W. B.	"
Senior E. Haries	"	Thomson, Thos. C.	"
Shaver, H. H.	"	Thomson, Tilley & Johnston (D. E. Thomson, K.C., Strachan Johnston, W. N. Tilley, A. J. Thomson, R. H. Parmenter)	"
Shilton, Wallbridge & Co. (John Shilton, W. H. Wall- bridge)	"	Thurston & Co. (W. G. Thurs- ton, T. S. Elmore)	"
Silverthorn T. Arch.	"	Tremear & Co (Wm. J. Tre- mear)	"
Simpson, James J. W.	"	Tytler & Tytler (John Tytler, K.C., Norman W. Tytler) . .	"
Singer, A. & E. F.	"	Urquhart, Urquhart & Page (D. Urquhart, T. Urquhart, H. W. Page)	"
Singer Jos. & Co.	"	Vandervoort, M.P.	"
Singer & Walsh (L. M. Singer George T. Walsh)	"	Vickers, Wm. W.	"
Skeans & McRuer (Wm. A. Skeans, James C. McRuer)	"	Waddell, R. Ruddock & Co. (R. R. Waddell, LL.B., E. G. McMillan)	"
Slattery, T. Frank	"	Waldron, Gordon	"
Smellie, Robert S.	"	Watson, Smoke, Smith & Sinclair (Geo. H. Watson, K.C., S. C. Smoke, J. G. Smith, N. Sinclair)	"
Smith, C. P.	"	Wegenast Franklin W.	"
Smith, H. G.	"	Welton, Herbert R.	"
		Werrett & Thompson (W. A. Werrett R. M. Thompson) . .	"
		Wherry & MacBeth (Robert Wherry and John C. M. Mac- beth)	"
		White, J. P., K.C.	"
		Wickham, H. J.	"
		Wilkins, Matthew	"

Willard, Wm. R.	Toronto	Ewart, W. M.	Westport
Williams, A. J.	"	Christian, Arthur E.	Whitby
Wray, Thos. R. J.	"	Farewell, John E., K.C.	"
Young & McEvoy (McGre-		Smith G. Young, LL.B.	"
gor Young, K.C., John A.		Wright, Telford & McDonald, Warton	
McEvoy). (<i>See card, p. 20</i>)	"	Hart, Geo. C.	Winchester
Fraser, James.	Tottenham	Bartlet, Bartlet & Urquhart	
Abbot, A.	Trenton	(A. R. Bartlet, Walter G.	
Mikel & Alford	"	Bartlet, G. A. Urquhart). .	Windsor
O'Flynn, Diamond & O'Flynn	"	Davis & Healy (F. D. Davis,	
O'Rourke, T. A.	"	A. F. Healy)	"
Ostrom, G. W.	"	De Grandpre, Jos. D.	"
Collins, A. Bernard.	Tweed	Ellis & Ellis (H. T. W. Ellis.	
Mikel, Stewart & Baalim		A. St. Geo. Ellis)	"
(Branch).	"	Fleming, Drake & Foster (O.	
Orniston, W. S.	Uxbridge	E. Fleming, A. B. Drake,	
Sharpe & Cook (S. S. Sharpe,		A. H. Foster)	"
Henry P. Cooke).	"	Furlong & Awrey (W. H.	
Hall, W. S.	Vankleek Hill	Furlong, E. C. Awrey)	
Labrosse, Raoul	"	<i>See card, p. 20</i>).	"
Collins, A.	Walkerton	Junor, Roy A.	"
Dixon, Thos.	"	Kenning & Cleary (E. C.	
Klein, O. E.	"	Kenning, E. A. Cleary)	
Robertson & McNab (D.		<i>See card, p. 57</i>).	"
Robertson, K.C., Alex. E.		Kerby, Frederick Charles. . .	"
McNab)	"	Morton, T. Mercer (<i>See</i>	
Coburn & Gordon (J. H.		<i>card, p. 57</i>).	"
Coburn, A. J. Gordon), Walkerville		Panet, A. P. E.	"
Carscallen, A. B.	Wallaceburg	Ridd, Wigle & McHugh	
Fraser, J. S.	"	(J. H. Rodd, S. S. Wigle,	
McDougall, A.	"	K.C., T. Gerald McHugh).	"
Humphries, I. A.	Warkworth	Sale, John	"
Payne, W. L., K.C.	"	Sheppard, M.	"
Haight, J. C.	Waterloo	Templeton, James.	"
McBride & MacKenzie (A.		Wilson Frank W.	"
B. McBride, E. W. Mac-		Holmes, Dudley, K.C.	Wingham
Kenzie)	"	Morton, J. A.	"
Cowan, Towers & Cowan		Vanstone, Richard	"
(Sarnia Branch)	Watford	Ball, A. S., K.C.	Woodstock
Fitzgerald, W. E.	"	Ball & Ball (Robt. N.	
Cowper, T. D.	Welland	Ball)	"
German & Morwood (W. M.		Kemp, Clifford	"
German, K.C., H. R. Mor-		Little, H. A.	"
wood)	"	McDonald, Peter	"
Gross, J. F.	"	McKay & Mahon (S. G.	
Maccomb, H. W.	"	McKay, K.C., Geo. Ma-	
Pettit, G. H.	"	hon).	"
Raymond & Spencer (L. C.		McMullen, W. T.	"
Raymond, L. B. Spencer) . .	"	Nesbitt, Montalieu	"
Rose & Flitt (Hugh A. Ross		Pearson, F. L.	"
J. H. Flitt).	"	West, W. S.	"
Robertson, J. S.	West Lorne	Fitzgerald, W. E.	Wyoming

PRINCE EDWARD ISLAND

Rogers, R. H.	Alberton	Haviland, Eustace H. .	Charlottetown
Gaudet & Haszard (G.		Johnston & Inman (J.	
Gaudet, K.C., J. M.		J. Johnston, K.C., Geo.	
Hynes).	Charlottetown	S. Inman, K.C.	"

McCallum, Calvin D.	Charlottetown	Stewart, J. D.	Charlottetown
McDonald, John S.	"	Warburton & Shaw (A. B. Warburton, K.C., D. E. Shaw)	"
McKinnon & McNeill (D. A. McKinnon, K.C., R. N. McNeill)	"	McQuaid, A.	Souris
McLean & McKinnon (A. A. McLean, K.C., D. McKinnon)	"	Bell, J. H., K.C.	Summerside
McLeod & Bentley (W. E. Bentley, K.C.).	"	McLeod, Neil.	"
(See card, p. 20)	"	McQuarrie & Arsenault (Neil McQuarrie, K.C., A. E. Arsenault)	"
Martin, K. J.	"	Saunders, A. C.	"
Morson & Duffy (C. Ga- van Duffy)	"	Strong, Heath	"
Palmer, H. James, K.C.	"	Strong, Ernest	"
Smallwood, Chas. R.	"	Tanton, B. W.	"
		Wright, Henry E.	"
		Wyatt, J. E.	"

QUEBEC

Mailhot, Marcel	Actonvale	Gaboury, Ernest	Campbell's Bay
Cloutier, Romulus, Head Office, Waterloo.	Adamsville	Bissonet, A. E. J., C. R. Chambly Basin Weldon, Jos.	Chambly Canton
Crepeau & Cote (L. P. Crepeau, K.C., P. H. Cote, C. R.	Arthabaska	Alain, Ludger A., K.C.	Chicoutimi
Lavergne, L. R.	"	Gagne, J. C.	"
Methot, J. E., K.C.	"	Girard, L. P.	"
Perrault & Perault (J. E. Perrault K.C., Gust Perrault, C. R.)	"	Lapointe & Langlais (Simon Lapointe, Antonio Lang- lais)	"
Walsh & Poisson (John F. Walsh, Jules Pois- son)	"	Levesque, Elzear, K.C. (See card, p. 20)	"
Gagnon, E., C. R.	Baie St. Paul	Tremblay, Onesime.	"
Gobell, Jules.	"	Beaulne, Joseph, K.C.	Coaticook
Dionne, J. B.	Beauceville East	Hanson, A. C.	"
Bergeron, J. G. H.	Beauharnois	Shurtleff, W. L., K.C.	"
Fortin, Tancrede	"	Verret, Hector, K.C.	"
Mercier, Paul	"	Charbonnel, L. E.	Cookshire
Bedard, J. E.	Beauport	Cloutier, Romulus, Head Office, Waterloo	Cowansville
Cambray, J. A.	"	Cotton, W. U., B.A., B.C.L.	"
Prevost, J. A.	"	Bayard, J. Alphonse	Danville
Capsey, George	Bedford	Garceau Nap., C. R.	Drummondville
Cloutier, Romulus, Head Office, Waterloo	"	Lalonde, C. H.	"
Cornell, Z. E., K.C.	"	Marier J.	"
Lamoureux, E. M. J.	"	Ringuet, Gaston	"
Bernard E.	Beloeil Village	Cloutier, Romulus, Head Office, Waterloo.	Dunham
Allard, Gaston.	Berthierville	Cloutier, Romulus, Head Office, Waterloo.	Eastman
Denis, Jean J.	"	Gaudet, A.	Farnham
Chabot, A. H.	Black Lake	Cloutier, Romulus, Head Office, Waterloo	"
Barry, D. R., K.C.	Bryson	Lefebvre, J. E.	"
Millar, Roland	"	Poulin, J. S.	"
Baudry, F. A.	Buckingham	Chagnon, M. J. E.	Fox River
Langlois, J. C.	"	Berube, Leo	Fraserville
Talbot, J.	"	Cimon, E. Horace	"
Barry, D. R., K.C. Campbell's Bay			

Lapointe, Stein & Leves-
que (Ernest Lapointe,
 K.C., Adolphe Stein, K.C.,
 D. Levesque)Fraserville

Lizotte & Michaud (L. P.
 Lizotte, Alex Michaud)"

Paradis, Leon"

Potvin & Langlais (W. A.
 Potvin, Jules Langlais)"

Pouliot, J. Frs."

Riou, S. C. (*See card, p. 21*)"

Talbot, L. A."

Boivin, Geo. H., M.P.Granby

Cloutier, Romulus, Head

Office, Waterloo"

Desilets & Desilets (Aug.

Desilets, F. Desilets) Grand'Mere

Lefebvre, A."

Pinard, J. H. L."

Chagnon, M. J. E. .Griffin Cove East

Cousineau LouisHull

De Grandpre, J. D."

Desjardins, A. R., C. R."

Devlin & Ste. Marie (E. B. Devlin,

K.C. J. W. Ste. Marie C.R.)"

Devlin, J. A."

Foran, T. P., K.C."

Fortier, H. A., K.C."

Graham, C. K."

Le Duc, L. A."

Major, F. B."

McConnell, A."

Parent, J. Alderic, K.C."

Wright, Geo. C., K.C."

Mitchell, A. E.Huntingdon

Short, R."

Bonin, Camille.Joliette

Bourgeois, Ulric."

Delanaudiere, C. T."

Denis, J. J."

Dubeau, J. A., K.C."

Ducharme, Camille"

Ducharme, J. P. Leon"

Grenier, J. A."

Guilbault & Sylvestre (J. A.

Guilbault, Jos. Sylvestre,

K.C.)"

Hebert, Ernest"

Ladouceur & Tellier (J. E. La-

douceur, Robert Tellier)"

Marsolais, A. L."

Piette, J. A."

Trudeau, Hector"

Cloutier, Romulus, Head

Office, WaterlooKnowlton

Fay, J. E."

Decary, Alph.Lachine

Hurteau, J. Adolphe"

Jasmin, A.Lachine

Drapeau, R. A.Lachute

Legault, J. L. L."

Palliser, J."

Becigneul, Adolphe, B.L.,

L.L.,Lake Megantic

Gaudet, J. Adelard"

D'Auteuil, PierreLa Malbaie

Martin, Percy"

Simard Raoul"

Guindon, J. L. U.Lambton

Faribault, Jos. Edouard,

K.C.L'Assomption

Ducharme, RomulusLa Tuque

Leclerc, Felix"

Nadeau, J. A."

Vien, Thos.Lauzon

Belleau, Baillargeon & Belleau

(E. Belleau, K.C., E. Baillar-

geon, Noel Belleau)Levis

Belanger, Arthur."

Bernier, Alphonse, C.R."

Darveau & Darveau (C. Dar-

veau, V. Darveau)."

De Billy, V. A."

Gelly, Emile."

Roy, Lactare"

Robert, LeoLongueuil

Lemay C. Albt.Lotbiniere

Beland, Gedeon.Louiseville

Tourigny, A.Magog

Achim, Langlois & De

GrandpreManiwaki

Cloutier, Romulus, Head

Office, Waterloo.Mansonville

Ostigny, EmileMarieville

Charette, ErnestMont Laurier

Lalonde, Wilfrid"

Bender, Albert Joseph,

K.C.Montmagny

Berube L. Omer"

Dechene, Aime"

Gagne & Gagne (Albert

Gagne, J. A. Gagne)"

Lavergne, Real"

Rousseau, Maurice, C.R.

(*See card, p. 21*)"

Adam, Joseph K.C.Montreal

Alexander, Geo. L., B.A.,

LL.B., B.C.L."

Allan, James B., K.C."

Angus, D. J."

Archambault, A. S."

Archambault & Archam-

bault (C. A. and Geo.)"

Archambault, J. L., K.C."

Archambault & Leblanc

(Joseph Archambault, K.C.,

Antonio Leblanc, LL.B."

Archambeault, Jos. H.	Montreal	Berthiaume, Albert	Montreal
Archambeault, L. H., C.R. . . .	"	Bertrand, Chs. A. H.	"
Armstrong, Edgar N., K.C. . . .	"	Bertrand, Ernest	"
Atwater, Surveyer & Bond		Bessette & Dugas (Wilfrid	
(Hon. A. W. Atwater, K.C.,		Bessette, K.C., Maurice	
E. Fabre Surveyer, K.C.,		Dugas, L.L.L.)	"
W. L. Band K.C., E. G. T.		Biron, F. X. A.	"
Penny, Thos. J. Coonan.		Bisaillon, Bisaillon & Bei-	
Lucien Beaugard). (<i>See</i>		que (F. J. Bisaillon, K.C.,	
<i>card p. 21</i>)	"	Hector Roannes Bisaillon.	
Audet & Brosseau (H. A. Au-		L. J. Beique).	"
det, A. Brosseau)	"	Bissonnet & Cordeau (A. E.	
Badeaux, P. A.	"	J. Bissonnet, C.R., L. B.	
Baker, G. H.	"	Cordeau)	"
Baker, W. A., K.C.	"	Bissonnette, J. B., K.C. . . .	"
Ballon, Isidore	"	Blair, Laverty & Hale	
Baril & Roch (Demetrius		(John W. Blair, K.C., F.	
Baril, H. Roch)	"	J. Laverty, K.C., C. A.	
Barnard, McKeown & Cho-		Hale, B. C. L.) (<i>See card</i>	
quette (C. A. Barnard,		<i>p. 21</i>)	"
K.C., W. K. McKeown, K.C.,		Bonin, Alex. L. jr.	"
Leopold Choquette)	"	Boudreault, J. B.	"
Barry, Leopold, L.L.B.	"	Bourbonniere, Fortunat, K.C.	
Bastien & Bastien (F. de		Bouthillier, Victor	"
S. A. Bastien, C. R., Joseph		Boyd, Leslie H., K.C.	"
M. Bastien).	"	Boyer, Louis, K.C.	"
Beatty, E. W., K.C.	"	Brassard, J. E. Evariste . . .	"
Beaubien & Lamarche		Brodeur, Berard & Calder	
(Hon. C. P. Beaubien, K.C.,		(Donat Brodeur, K.C., Jos.	
J. A. Lamarche, K.C., Al-		B. Berard, K.C., P. L.	
deric Blain, L.L.L.)	"	Berard, K.C., Robert L.	
Beauchamp, Emile	"	Calder, B.C.L.)	"
Beauchamp, Jean Jos, K.C.,		Brodeur, J. A. A.	"
L.L.B.	"	Brossard & Pepin (Arthur	
Beauchamp, J. S. E.	"	Brossard, K.C., A. Pepin,	
Beauchemin, Alfred	"	L.L.L.)	"
Beaudry & Beaudry (L. R.		Brousseau & Brosseau (T.	
Beaudry, C.R., Adrien		Brousseau, K.C., Bernard	
Beaudry, C.R.	"	Brousseau) (<i>See card p.</i>	
Beaudry, Paul G. H.	"	<i>22</i>)	"
Beaupre, G. E.	"	Brousseau, Jacques	"
Beaugard & Labelle (Elie		Brown, Montgomery &	
Beaugard, J. Ed, Labelle		McMichael (A. J. Brown,	
Beckett, A. E., K.C., G.T.R.		K.C., George H. Montgom-	
Solicitor	"	ery, K.C., Robt. C. McMi-	
Beique & Beique (Hon.		chael, K.C., Rennie O. Mc-	
Fred. L. Beique, K.C., F.		Murtry, Warwick F. Chip-	
A. Beique, C.R., H. A. Bei-		man, K.C., Walter R. L.	
que, L.L.B.)	"	Shanks, E. Stuart McDou-	
Belanger Geo.	"	gall, Daniel P. Gilmor)	
Benoit, Benj.	"	(<i>See card p. 22</i>)	"
Bercovitch, Lafontaine &		Brown, Staveley & Jenkins	
Gordon (Peter Bercovitch,		(E. N. Brown, W. R. Stave-	
K.C., Ernest Lafontaine,		ley, Jos. Jenkins)	"
Nathan Gordon).	"	Bruchesi & Bruchesi (Chas.	
Bernard, J. A.	"	Bruchesi, K.C., Chas. Emile	
Bernard & Sullivan (L. E.		Bruchesi)	"
Bernard, J. A. Sullivan) . . .	"	Buchan, J. S., K.C.	"
Bernier, J. B.	"	Budden, H. A.	"
		Budden, M., B.C.L.	"

Budyk, J. A.	Montreal	Coyle, Peter J., K.C.	Montreal
Bumbray & Gauthier (J. E. C. Bumbray, Z. Gauthier).	"	Craig, F. A.	"
Burke, M. T.	"	Crankshaw & Crankshaw	
Burnett, Ralph	"	(Jas. Crankshaw, K.C., Jas. Crankshaw, jun.)	"
Busteed & Robertson (E. B. Busteed, K.C., D. C. Robertson, K.C.)	"	Cresse, L. G. A., K.C.	"
Butler, T. P. (Col.), K.C.	"	Cullen, James P.	"
Butler, William H.	"	Curran & Curran (Frank J. Curran, K.C., Louis E. Curran)	"
Cahan, C. H., K.C.	"	Dagenais, Caron & Papineau (J. P. W. Dagenais, Albert Papineau, H. S. M. Caron, Aime P. Grothe).	"
Cahan, C. H. (jr.), LL.B.	"	(See card p. 23)	"
Cameron, Alex. G.	"	Dalbec, Alfred.	"
Cameron, J. A. H., K.C.	"	Dalbec, Hector	"
Cameron, John D., B.A., B.C.L.	"	Damphousse, J. H., K.C.	"
Camirand P. S. L.	"	Dandurand, Hon. R., C.R.	"
Campbell, McMaster & Papineau (George A. Campbell, K.C., Andrew R. McMaster, K.C., Talbot M. Papineau, Auguste Angers; Counsel: Donald McMaster, K.C., D.C.L. (See card, p. 22).	"	David, J. Arthur	"
Carmichael, Saumarez	"	David, J. H., C.R.	"
Casgrain, Mitchell, Holt, McDougall Creelman & Stairs (Victor E. Mitchell, K.C., Chas. M. Holt, K.C., A. Chase Casgrain, K.C., Errol M. Macdougall, J. J. Creelman Gilbert S. Stairs, Pierre F. Casgrain)	"	Davidson & Ritchie (L. H. Davidson, K.C., W. F. Ritchie, K.C.)	"
Caumartin, J. P. P.	"	Davidson, Wainwright, Alexander & Elder (Peers Davidson, K.C., Arnold Wainwright, K.C., Maurice Alexander, A. H. Elder). (See card, p. 23)	"
Cedras, J. L.	"	De Bellefeuille, E. L., K.C.	"
Champoux, Charles	"	De Boucherville & Mathieu (J. B. De Boucherville, A. Papineau Mathieu)	"
Chenevert, Rene	"	Decarie, Hon. J. L., C.R.	"
Cholette & Rondeau (H. A. Cholette K.C.)	"	Decarie, J. N.	"
Cinq-Mars, Alex.	"	Decary & Decary (Alphonse Decary, K.C., P. A. Decary, E. Marier)	"
Claxton & Ker (A. G. B. Claxton, K.C., T. R. Ker)	"	Dequire & Nantel (A. S. Dequire, J. Bruno Nantel)	"
Cloran, Hon. H. J., K.C.	"	Delage, L. O.	"
Coderre, Hon. Louis, C.R.	"	De Lamothe, Jacques	"
Cohen & Goldenberg (Jos. Cohen, B. Goldenburg)	"	De Lanaudiere, C. T.	"
Cook & Magee (J. Wilson Cook, K.C., A. A. Magee, Hugh S. Pedley, T. B. Heney). (See card, p. 23)	"	Delisle, Arthur, C. R.	"
Cotton & Westover (C. M. Cotton, E. W. Westover).	"	DeLorimier, Godin, Morier & Cadotte (Hon. Sir A. R. Angers, K.C., A. E. DeLorimier, K.C., Eug. H. Godin, K.C., J. E. Morier, J. E. Cadotte). (See card p. 23).	"
Coughlin, G. A.	"	De Lorimier, Hon. C. C., C.R.	"
Couper, W. W.	"	DeLorimier, Jules	"
Cousineau & Lacasse (P. Cousineau, K.C., N. U. Lacasse).	"	DeLorimier, L. R.	"
Cousins, Geo. V.	"	de Lorimier, Raoul G., K.C.	"
		Denis Wilfrid	"
		Depocas, G. E., K.C.	"

Desaulniers & Charbonneau (Gonzalve Desaulniers, K.C., J. Charbonneau) . . .	Montreal
Desbois, Desire L., K.C. . .	"
Descarries & Descarries (Jos. A. Descarries, K.C., T. N. Descarries)	"
Desjardins Arthur	"
Desjardins, Art. sen	"
Desjardins, C. H.	"
De Sola & MacNaughton (B. C. De Sola, G. F. Mac- Naughton)	"
Desrochers, Felix	"
Dessaulles, Garneau & Va- nier (Casimir DesSaulles, K.C., Leon Garneau, K.C., Geo. P. Vanier, Jean Desy) . .	"
Dillon, J. H., B.C.L.	"
Dion, J. A. E.	"
Doherty, Hon. C. J., K.C. . .	"
Dorais & Dorais (Albert P. Dorais, K.C., Oscar P. Do- rais, K.C.)	"
Dorval, Ph. L.	"
Drouin, Joseph, B.C.L. . . .	"
Dubreuil, J. F.	"
Duckett, R. L.	"
Duff & Merrill (A. Huntly Duff, K.C., W. A. Merrill, Maurice Goudrault)	"
Dupre, L. P., L.L.B.	"
Dussault, Mercier & Du- puis (J. C. H. Dussault, J. A. Mercier, Pierre Ls. Du- puis)	"
Dutaud, Gustave	"
DuTremblay, P. R.	"
Eliasoph, Sol., B.C.L.	"
Elliott, David & Mail- hiot (H. J. Elliott, K.C., L. A. David, K.C., Adolphe Mailhiot, Segfried Bush, J. S. Lamarre) (<i>See card p.</i> <i>24</i>)	"
Emard & Emard (J. U. Emard, K.C., Chas. Emard, J. H. Michaud, L.L.L.) . . .	"
Enright, F. T.	"
Ewing & McFadden (J. Armitage Ewing, K.C., G. S. McFadden)	"
Fauteux & Fauteux (G. Fau- teux, Francis Fauteux) . . .	"
Ferguson & Tritt (J. M. Fer- guson, K.C., Saul Tritt) . .	"
Fineberg N. S.	"
Fisher, R. E.	"
Fitzpatrick, B. T.	"
Flamand, Chas. E.	Montreal
Flamand & Robert (Ed. Fla- mand, Geo. Robert)	"
Fleet, Falconer, Phelan & Bovey (C. J. Fleet, K.C., Alex. Falconer, K.C., M. A. Phelan, W. Bovey, Robert- son Fleet, W. R. Hastings, A. Lafontaine)	"
Fontaine, Labelle & Desjar- lais (Z. Fontaine, J. A. La- belle, K.C., E. Desjarlais)	"
Fortin, A. F. X.	"
Fortin, Anthime, L.L.L. . . .	"
Fortin, Tancrede	"
Foster, Martin, Mann, Mackinnon, Hackett & Mulvena (Geo. G. Foster, K.C., J. E. Martin, K.C., J. A. Mann, K.C., C. G. MacKinnon, K.C., John T. Hackett, H. R. Mulvena) . .	"
Fournier, J. O.	"
Gagne, Arthur, B.A., L.L.B.	"
Gagne, Horace J.	"
Gagnon, Amedee	"
Garand, Hector	"
Gaudet, Chas. D., K.C. . . .	"
Gauthier & Beauregard (L. J. Gauthier, K.C. Elzear Beau- regard)	"
Gelinas, Joachim L.	"
Gendron, Lucien	"
Genereux, F. A.	"
Gecfrion, Geoffrion & Cus- son (V. Geoffrion, K.C., Aime Geoffrion, K.C., Vic- tor Cusson, K.C.)	"
Germain, Alban, C.R.	"
Gibb J. R.	"
Gibeault, Arthur	"
Gilman, Hon. F. E., K.C.	"
Glass, L. G.	"
Globensky, Hon. Arthur. . .	"
Godin, J. L.	"
Goldstein, Beullac & Engel (Maxwell Goldstein, K.C., Pierre Beullac, K.C., John A. Engel)	"
Gosselin, Leblanc & Leblanc (L. A. Gosselin, C. R., Aime Leblanc, R. L. Calder, Raoul Leblanc)	"
Gouin Hon. Sir L., C.R. . .	"
Goyette, Omer A., K.C. . . .	"
Goyette, Papillon, Molleur & Clavel (C. Aime Goyette, J. H. O. Papillon J. A. Molleur, J. A. Clavel) . . .	"

Gravel, J. A. E.	Montreal	Jette, J. Tancrede	Montreal
Green shields, Green-		Joannette, J. H.	"
shields, Languedoc &		Jodoin, Henry, K.C.	"
Parkins (J. N. Green-		Jodoin, Tancrede.	"
shields, K.C., E. Languedoc,		JOHNSON, A. R.	"
K.C., C. G. Greenshields, E.		Johnson, W. S.	"
R. Parkins, S. G. Dixon,		Jones, A. G.	"
Ralph E. Allan) (<i>See card</i>		Kavanagh, Lajoie & La-	
<i>p. 24</i>)	"	coste (Hon. Sir Alex. La-	
Grenier, A. W., K.C.	"	coste, K.C., H. J. Kava-	
Grenier, Armand	"	nagh, K.C., H. Gerin-La-	
Grethe, A. P.	"	joie, K.C., Paul Lacoste,	
Guerin, Gaeton	"	K.C., Alex. Lacoste, LL.B.,	
Guertin, C. A., C. R.	"	T. J. Shallow, B.C.L, Henri	
Guimont, Ernest	"	Gerin-Lajoie, Alex. Gerin-	
Hains, Henri	"	Lajoie). (<i>See card, p. 25</i>)	"
Handfield, Handfield & Hand-		Kerry, John	"
field (W. A. Handfield,		Lachapelle & Beaulieu (Ana-	
K.C., Arthur Handfield,		tote Lachapelle, J. A.	
L.L.L., Albert Handfield,	"	Beaulieu)	"
L.L.B.)	"	Lachapelle & Denis (Adelard	
Harris, S. L. Dale	"	Lachapelle, Lucien Denis).	"
Harvey, A. E., K.C.	"	Lacroix, J. O., K.C.	"
Hatchett, F. J.	"	Laflamme, Mitchell & Cal-	
Hebert, Jos.	"	laghan (N. K. Laflamme,	
Heneker, Chauvin, Baker		K.C., W. G. Mitchell, K.C.,	
& Walker (R. T. Heneker,		Frank Callaghan)	"
K.C., Henry N. Chauvin,		Lafleur, MacDougall,	
K.C., Harold Earle Walker,		Macfarlane & Barclay	
C. S. Lemesurier, J. Noel		(Eugene Lafleur, K.C., Gor-	
Beauchamp). (<i>See card,</i>	"	don W. MacDougall, K.C.,	
<i>p. 25</i>)	"	Lawrence Macfarlane,	
Hetu, J. C. A.	"	K.C., Hon. Adrian Knatch-	
Hibbard, Gosselin, Moyse		bull-Hugessen, Gregor Bar-	
& Lanctot (F. W. Hibbard,		clay, William B. Scott,	
K.C., Louis Gosselin, K.C.,		(<i>See card, p. 25</i>)	"
R. E. Moyse, B.C.L., N. E.		Lafortune & Delage (D. A.	
Lanctot, B.C.L.) (<i>See</i>		Lafortune, K.C., V. A.	
<i>card, p. 24</i>)	"	Delage).	"
Houle, Leopold	"	Laliberte, Edgar	"
Hoyle, Hugh L.	"	Lamarche, J. S.	"
Hubert, L. J. R.	"	Lamarche Jos. P.	"
Hurteau & Hurteau (M.		Lamarche, P. E.	"
Adolphe Hurteau, J. A.	"	Lamarre & Parent (J. I.	
Hurteau)	"	Lamarre, C.R.)	"
Hutchins, H. A., K.C.	"	Lamontagne Yvon, B.A. . . .	"
Iles, Charles	"	Lamothe, Antoine	"
Internoscia, Jerome	"	Lamothe, Gadbois & Nan-	
Jacobs, Couture & Fitch		tel (J. C. Lamothe, K.C.,	
(S. W. Jacobs, K.C., G. K.		Emilien Gadbois, LL.L., J.	
P. Couture, L. Fitch). . .	"	M. Nantel, B.C.L.) (<i>See</i>	
(<i>See card, p. 25</i>)	"	<i>card, p. 26</i>)	"
JACOBS, L. W.	"	Lamothe, O. A.	"
Jalbert & Vanier (J. W. Jal-		Lanctot, Chs., C.R.	"
bert, Anatole Vanier) . . .	"	Lanctot, J. P.	"
Jarry, J. A., C.R.	"	Landry, L. J., B.A., LL.B.	"
Jasmin & Berthiaume (A.		Lanthier, J. O.	"
Jasmin, A. Berthiaume)	"	Laporte, Clovis, K.C.	"
Jean, Joseph	"	Lariviere, M. J. C. B.C.L.	"

Larose, Vital.	Montreal	McGibbon, Casgrain, Mitchell & Casgrain (V. E. Mitchell, K.C., Charles M. Holt, K.C., A. Chase Casgrain, K.C., Errol M. McDougall, J. J. Creelman, G. S. Stairs, Pierre F. Casgrain). (See card, p. 26).	Montreal
Larose, Wilfrid.	"	McGoun, Archibald, K.C.	"
Laurendeau, Hon. C., C.R.	"	McGown, Arch. F.	"
Lavallee, Chs. Hector, K.C.	"	MacKay, Hugh, K.C.	"
Lavallee, Desmarais & Deserres (L. A. Lavallee, C.R., Jules Desmarais, R. Deserres)	"	Mackay J. H.	"
Lavallee P. Oscar, K.C.	"	MacLean, Hon. A. H., K.C.	"
Lavery, Salluste	"	McLennan, Howard & Aylmer (F. S. McLennan, K.C., E. Edwin Howard, K.C., H. U. P. Aylmer, K.C., Jacob de Witt, O. S. Tyndale)	"
Leduc, A.	"	MacNaughton John	"
Leblanc, Albert	"	Magee, A. A.	"
Leblanc, Ant.	"	Maillet, Robert	"
Leblanc, Brossard, Forest, Lalonde & Coffin (Hon. Sir P. E. Leblanc, C. R., Edmond Brossard, C.R., Alf. Forest, LL.M., Arth. Lalonde, LL.B., F. G. Coffin, LL.B.). (See card, p. 26).	"	Marceau, J. O.	"
Leduc, Adelard	"	Marechal, L. T., K.C.	"
Lefebvre, L. A., K.C.	"	Margolese, L. S.	"
Lefebvre, L. J.	"	Mariotti, H. C. G.	"
Lefebvre, P. Euclide	"	Markey, F. H., K.C.	"
Legrand, Omer	"	Marsan G. A., K.C.	"
LeHuray, S. J.	"	Martineau, Alph.	"
Lemieux, Hon. Rodolphe K.C. M.P.	"	Martineau & Jodoin (Victor Martineau, C.R., Arthur Jodoin)	"
Leonard & Gallagher (J. E. E. Leonard, M. J. F. Gallagher)	"	Masson & Billette (L. Masson, K.C., J. E. Billette)	"
Lessard, Geo. Etienne	"	Matheson, R. D.	"
Leveille, Lionel	"	Mathieu, J. J. U., C.R.	"
Lighthall & Harwood (W. D. Lighthall, K.C., C. A. Harwood, K.C.)	"	Mathieu, L. J. Armand	"
Lonergan, M. S., K.C.	"	Meagher & Coulin (J. J. Meagher, K.C., J. Ed. Coulin K.C.)	"
Loranger, J. H. C.R.	"	Melancon, Lionel	"
Loranger & Prudhomme (Hon. L. O. Loranger, C.R., L. J. Loranger, C.R., J. A. Prudhomme)	"	Menard, G.	"
Lovett, H. A., K.C.	"	Mercier, Hon. H., C.R.	"
Lussier, Edmond, K.C.	"	Meredith, Holden, Hague, Shaughnessy & Heward (F. E. Meredith, K.C., H. J. Hague, K.C., A. R. Holden, K.C., Hon. W. J. Shaughnessy, C. G. Howard, H. H. Scott; C. S. Campbell, K.C., counsel) (See card, p. 26).	"
Lyman & Dunlop (John H. Dunlop, K.C.)	"	Meunier, L. C., B.A.	"
Macalister, A. W. G., K.C.	"	Mignault, P. B., K.C.	"
McAvoy & Dufresne (D. McAvoy, K.C., A. Dufresne)	"	Migneron, J. H.	"
MacCallum, O. B.	"	Milllette, N. A., K.C.	"
McCord, David R., K.C.	"	Millman, L.	"
McCormick & Lebourveau (Duncan McCormick, K.C., Stedman Lebourveau, K.C.)	"	Mills, A. L. R.	"
McDonald, A. J.	"	Mingie, Geo. W.	"
MacDonald James	"		

Moffat, George U.	Montreal	Perras, F. X.	Montreal
Molleur, O. G.	"	Perron, Taschereau, Rinfret, Vallee & Genest (J. L. Perron, K.C., R. Taschereau, K.C., T. Rinfret, K.C., Arthur Vallee, K.C., Rosario Genest, A. R. W. Plimsoil, R. Brodeur, Ad. Cheuinard). (<i>See card, p. 27</i>).	"
Monet, Amedee	"	Phaneuf J. Emery, B.A. B.C.L. (<i>See card, p. 27</i>).	"
Monette, Philippe	"	Piche & Bernard (J. A. Piche, C.R., J. F. F. Bernard)	"
Montpetit, Edouard	"	Pilon, J. Albert	"
Monty, C. E.	"	Pilon, J. W.	"
Monty & Duranleau (Rodolphe Monty, C.R., Alfred Duranleau, C.R.)	"	Place & Stockwell (E. E. Place, Ralph F. Stockwell) well)	"
Morey, Guy M.	"	Plante, Leandre.	"
Morgan, E. A. D.	"	Plante, W. A.	"
Morrison, G. A., K.C.	"	Plourde, Ubalde	"
Morrison M. J.	"	Popliger, Isidore	"
Mousseau, J. O., K.C.	"	Pouliot, Mathieu	"
Muhlstock, A. W.	"	Pruneau, J. A. N.	"
Mullin, R. T.	"	Rainville & Gagnon (J. H. Rainville, M.P., Oscar Gagnon)	"
Murphy, Perrault, Raymond & Gouin (D. R. Murphy, K.C., Antonio Perrault, K.C., M. Raymond, Leon Mercier Gouin)	"	Rainville & Rainville (Hon. H. B. Rainville, K.C., Paul Rainville, C.R.)	"
Normandeau, J. E.	"	Raynes, Chas. K.C.	"
Normandin, Z.	"	Renaud, Gustave	"
Ogden, C. G., K.C.	"	Renaud, J. H. W.	"
O'Sullivan, John A.	"	Rheume, Theodule, C.R.	"
Owens, T. Sargent	"	Rivet & Papineau (L. A. Rivet, K.C., Albert Papineau)	"
Pagnuelo, P., C.R.	"	Robillard, Julien, Tetreau & Marin (J. A. Robillard, C.R., J. A. Julien, E. D. Tetreau, Gustave Marin).	"
Paradis, Rodolphe, C.R.	"	Robitaille, Clement, B.A., L.L.B.	"
Farent, H.	"	Rocher, Robert, C.R.	"
Pariseault, Rheume, Archambault & Belair (Chas. A. Pariseault, M. C. Rheume, J. A. Archambault, J. P. Belair)	"	Rodier, Charlemagne, C.R.	"
Patenaude & Monette (Hon. E. L. Patenaude, M.P., Gustave Monette). (<i>See card, p. 27</i>).	"	Ross & Angers (H. S. Ross, E. Angers).	"
Patenaude, Hon. E.	"	Rondeau & Plante (A. O. Rondeau)	"
Patterson & Jacobs (W. Patterson, K.C., N. W. Jacobs, B.C.L.)	"	Rose Bernard.	"
Payette, J. V.	"	Roy, Euclide, L.L.L.	"
Pelissier, Wilson & St. Pierre (Ernest Pelissier, K.C., C. A. Wilson, K.C., M.P., G. St. Pierre). (<i>See card, p. 27</i>).	"	Roy, F. X., K.C.	"
Pelletier, Alexis D.	"	Roy, Romuald, B.C.L.	"
Pelletier, A. S.	"	Ryan, P. C.	"
Pelletier Hormisdas, C.R.	"	St. Denis, Leopold	"
Pelletier, Jos.	"		
Pelletier, Letourneau, Beaulieu & Mercier (L. C. Pelletier, K.C., S. Letourneau, K.C., L. E. Beaulieu, Paul Mercier)	"		

St. Germain, Guerin & Raymond (Paul St. Germain, C.R., Leopold Guerin, B. Panet Raymond) .	Montreal
St. Jacques, Filion, Houle & Lamothe (J. L. St. Jacques, K.C., Zephirin Filion, Armand Houle, B.C.L., Leon Lamothe, L.L.B.) .	"
St. Pierre, Alex.	"
Sassville, Emile L.	"
Scott, H. H.	"
Senecal & Gelinas (Oscar Senecal, K.C.)	"
Sinclair, R. W.	"
Smith, Markey, Skinner, Pugsley & Hyde (R. C. Smith, K.C., F. H. Markey, K.C., Waldo W. Skinner, K.C., Hon. William G. Pugsley, K.C., G. Gordon Hyde)	"
Solomon, N. (<i>See card, p. 28</i>)	"
Stackhouse, Russell T.	"
Stephens, L. de K.	"
Stewart & Stewart (A. S. Stewart, Wm. Stewart)	"
Surveyer, Paul	"
Sylvestre, C. J.	"
Tache, L. H.	"
Taillon, Bonin, Morin & Laramée (J. A. Bonin, K.C., L. J. S. Morin, A. Z. Morin, Arthur Laramée)	"
Taillon, Hon. Sir L. O., C.R. . . .	"
Tanner, A. H.	"
Tansey, T. M.	"
Tellier, Hon. Ls., C.R.	"
Tessier, Camille	"
Tessier, J. D. C.	"
Tetreau, Maurice	"
Theberge, Albert, C.R.	"
Thibault, Olivier	"
Tremblay, F. P.	"
Tritt, S. Gerald	"
Truell, H. V.	"
Trudeau & Guerin (C. E. Guerin, J. C. E. Trudeau, L. E. Guerin)	"
Tucker, Henry J., B.C.L.	"
Vanier, Guy, B.A. L.L.L.	"
Vineberg A. H.	"
Vipond & Vipond (Ernest E. Vipond, K.C., T. Salckeld, Vipond)	"
Walsh & Walsh (J. C. Walsh, K.C., Thos. E. Walsh, K.C.)	"
Walton, F. P., K.C.	Montreal
Waterston, E. J.	"
Weinfield, Sperber, Ledieu & Fortier (Henry Weinfield, Marius M. Sperber, Pierre Ledieu, Jacob Yale Fortier)	"
Weir, R. Stanley, K.C.	"
Weldon & Harris (Jos. W. Weldon, S. L. Dale Harris) (<i>See card, p. 28</i>)	"
Whelan, John P.	"
Whelan, Jos.	"
White & Buchanan (W. J. White, K.C., A. W. P. Buchanan, K.C., Jean Panne-ton, L.L.L.)	"
Yvon & Trudel (A. W. Yvon, Jean Trudel)	"
Duggan, Ed. J.	Murray Bay
Merizzi, Emile	Napierville
Bugeaud & Cote (F. Bugeaud, G. Cote), New Carlisle	
Kelly, Hon. J. Hall	"
Camirand, W., K.C.	Nicolet
Comeau, L. H.	"
Trahan, Arthur, K.C.	"
Bousquet, J. B.	Nominigues
Delage, A.	"
Cloutier, Romulus (Head Office, Waterloo)	North Stukely
Brasset, Maurice	Papineauville
Mackay S.	"
Brasset, M.	Perce
Flynn, W. A. E.	"
Garneau, A. S., K.C.	"
Pouliot, N.	"
Houde, Louis	Plessisville
Ladouceur, E. A. B., Pointe aux Trembles en Haut	
Aylwin, T. C.	Quebec
Beaubien, L. Omer	"
Bedard, Prevost & Tasche- reau (Jos. E. Bedard, K.C., J. A. Prevost, J. E. Tasche- reau)	"
Belanger, Art.	"
Belleau, Baillargeon & Belleau (Eusebe Belleau, Elz. Baillargeon, Noel Belleau). (<i>See card, p. 28</i>)	"
Bellex, L. G.	"
Bernier, Hector	"
Bernier, Bernier & de Billy Alph. Bernier, K.C., Henri Bernier, Valmore de Billy)	"
Boivin, Henri	"

Bouffard Jean.	Quebec	Gobeil Ant.	Quebec
Boulanger, Oscar	"	Gosselin, Jean.	"
Cambray & Le Tarte (J. A. Cambray, Chs. M. Le Tarte)	"	Grenier & Pare (H. Grenier, J. H. Pare)	"
Campbell, R., K.C.	"	Guay & Fremont (Adolphe Guay, Charles Fremont)	"
Carbray, Thos. J.	"	Hudson, J. A., C.R.	"
Cannon, Power & Roy (Lucien Cannon, Chs. G. Power, L. Roy)	"	Jolicoeur, Ph. J.	"
Casgrain, Rivard, Chauveau & Marchand (Hon. Th. Casgrain, K.C., Adj. Rivard, K.C., C. A. Chauveau, Aime Marchand)	"	Jones, G. E. Allen	"
Champoux, Edgar	"	Lachance, Ahern & Morin (Arthur Lachance, K.C., M. Jos. Ahern, Max Morin)	"
Chapleau, J. E.	"	Laferte & Pouliot (Hector Laferte, L. A. Pouliot)	"
Cimon, M. C. H.	"	Lane & Lemieux (J. A. Lane, M. A. Lemieux)	"
Cook, W. & A. H. (W. Cook, K.C., A. H. Cook, K.C., Arch. Laurie, F. Murphy, K.C.)	"	Langlois, P. W.	"
Corriveau, Apollinaire	"	Laramée, Hormisdas	"
Darveau & Darveau (C. Darveau, E.C., C. V. Darveau)	"	Larue & Robitaille (J. L. Larue, Paul Robitaille)	"
Davidson, W. H., C.R.	"	Larue W.	"
Demers & Demers (L. G. Demers, K.C., A. Demers)	"	Laurie, Archibald, K.C.	"
Dionne, C. E. L., K.C.	"	Laverne Armand	"
Dorion & Gosselin (Chs. N. Dorion, H. Fanning Gosselin)	"	Lortie J. F. E., C.R.	"
Drouin, Sevigny & Amyot (O. Drouin, K.C., Hon. A. Sevigny, K.C., M.P., W. Amyot). (<i>See card, p. 29</i>)	"	Masson, Philippe	"
Drouin, Paul	"	Mercier, E.	"
Edge, T. W.	"	Morin, Oscar J.	"
Falardeau Adrien (<i>See card p. 29</i>)	"	Morand & Savard (Lucien Morand, Alp. Savard)	"
Fitzpatrick, Dupre & Gagnon (Arthur Fitzpatrick, Maurice Dupre, J. O. Gagnon)	"	Morin, L. D.	"
Fortin, J. E.	"	O'Sullivan, H. M.	"
Francoeur & Vien (J. N. Francoeur, Thos. A. Vien)	"	Parent, L. Emile	"
Gagne & Gagne (J. Arthur Gagne, L. R. Gagne)	"	Parent, Hon. S. N., C.R.	"
Gagne, J. C.	"	Patry, Jules	"
Galipeault, St. Laurent & Metayer (A. Galipeault, Ls. St. Laurent, J. A. Metayer)	"	Pelland, Leo.	"
Gelly & Dion (Emile Gelly, Aime Dion)	"	Pentland, Stuart, Gravel & Thomson (Chas. A. Pentland, K.C., G. G. Stuart, K.C., J. P. A. Gravel, A. C. M. Thomson) (<i>See card p. 30</i>)	"
Gibson & Dobell (George F. Gibson, K.C., Alfred C. Dobell). (<i>See card, p. 29</i>)	"	Philibert, E.	"
		Plamondon & Bedard (Marius Plamondon, J. E. Bedard)	"
		Plante Wilfrid	"
		Robertson, Alex., K.C.	"
		Rochette, J. A., C.R.	"
		Rouillard & Boissonneault (Leon Rouillard, Raoul Boissonneault)	"
		Stafford, Lawrence, K.C.	"
		Taschereau, Allyn (<i>See card, p. 30</i>)	"
		Taschereau, Ant. C.	"
		Taschereau, Edouard	"
		Taschereau, Ernest	"

Taschereau, Roy, Cannon & Parent (Hon. L. A. Taschereau, K.C., Ferdinand Roy, K.C., L. A. Cannon, Geo. Parent). Québec

Tessier, Hon. Jules, C.R. "

Tessier, U. J., M.A.D. "

Theriault & Drouin (Elisee Theriault, Oscar Drouin) "

Turcotte Jos. P., K.C. "

Turgeon, Roy, Langlais & Godbout (Hon. Adelard

Turgeon, Ernest Roy,

Romeo Langlais, F. X.

Godbout) "

Cloutier, Romulus (Head

Office, Waterloo). Racine

Artois, J. V. Richmond

Leclerc, Felix "

McIver, W. E. "

Asselin & Asselin (L. N.

Asselin, K.C., R. E. Asse-

lin) Rimouski

Begin, P. A. "

Bernier, N. "

Gagnon, Sasseville &

Gagnon (I. Gagnon, LL.B.,

Elz. Sasseville, LL.L., P.

E. Gagnon, LL.L.) (*See*

card, p. 30) "

Garon & Jessop (A. P. Garon,

J. Jessop) "

Martin, J. P. "

Tache, Louis, K.C. "

Tessier & Cote (A. M. Tes-

sier, K.C., E. A. Cote) "

Paradis, Leon.

Riviere du Loup Station

Chagnon, M. J. E.,

Riviere du Renard

Bergeron, L. T. Roberval

Boily, Armand "

Lapointe, Langlois & Bois-

sonneau "

Lefebvre, Thomas "

Hovey, Horace M., K.C. Rock Island

Cloutier, Romulus, Head

Office, Waterloo. Roxton Falls

Cloutier, Romulus, Head

Office, Waterloo. Roxton Pond

Drapeau, R. A.,

St. Agathe des Monts

Cloutier, Romulus, Head

Office, Waterloo.

St. Alphonse de Granby

De La Ronde, R. P. St. Andrews

Plourde Ubald, St. Anne de Beaupre

Cloutier, Romulus, Head

Office, Waterloo.

St. Anne de Stukeley

Beaudoin, R.,

St. Camille de Bellechasse

Cloutier, Romulus, Head

Office, Waterloo.

Ste. Cecile de Milton

Wurtele, C. J. C.,

St. David d'Yamaska

Champagne Hon. Hector,

K.C. St. Eustache

Fortin, Arthur. St. Evariste

Gaudet, H. St. Evariste Station

Allard, Adolphe, St. Frs. du Lac

Baril, Z. " "

Denis, Jean J., K.C.,

St. Gabriel de Brandon

Martineau, Alp. "

Bolduc, Remi St. George de Beauce

Godbout, Arthur, "

Godbout, Arthur. St. George East

Beauregard, J. O., K.C. St. Hyacinthe

Fontaine & Chagnon

(V. E. Fontaine, G. J.

Chagnon). "

Lussier, Flynn & Gen-

dron (L. Lussier, F.

Flynn, L. Gendron).

(*See card, p. 31*). "

Phaneuf, J. Emery,

B.A., B.C.L. (*See*

card, p. 27) "

DeMartigny, J. C. L. St. Jerome

Fortin A. "

Marchand, C. E. "

Rochon & Nantel (W. B.

Nantel, K.C., Gedeon

Rochon) "

Cloutier, Romulus, Head

Office, Waterloo.

St. Joachim de Shefford

Belanger, L. C. St. Johns

Cartier, J. "

Chasse, P. A., K.C. "

Demers, Joseph "

Dore, P. J. "

Fortin, Georges "

Girard, A. D. "

Poulin, Stanislas, K.C. "

Bouffard & Godbout

(P. Bouffard, A.

Godbout),. St. Joseph de Beauce

Dufour, F. X.	St. Joseph de Beauce	Leblanc, J. A., K.C.	Sherbrooke
Hamel & Faribault (G. F. Hamel, J. Faribault)	" " "	Lemay, J. H.	"
Pacaud & Morin (A. Pacaud, K.C., L. Morin, K.C.)	" " "	McDonald R., K.C.	"
Talbot & Beaudoin (L. U. Talbot, R. Beaudoin)	" " "	Morin, Leonidas	"
Harvey, A. E.	St. Lambert	Nicol, Lazure & Cou- ture (J. Nicol, K.C., Wilfrid Lazure, J. S. Couture)	"
Laramée, Arthur	"	O'Bready & Panne- ton (M. O'Bready, D. Panne- ton)	"
Cloutier, Romulus, Head Office, Waterloo	St. Marie d'Ely	Rioux, V. Emile	"
Morency, J. A.	"	St. Pierre, G. H., K.C.	"
Cloutier, Romulus	St. Marie d'Ely	Tracy, W. C.	"
Trudeau, J. C. E.	St. Remi	Brousseau, J. B., K.C.	Sorel
Falardeau, Adrien	St. Roch	Cardin & Allard (P. J. A. Cardin, M.P., Adolphe Allard)	"
Ethier, J. A. C.	St. Scholastique	Lefebvre F., K.C.	"
Lalande, D.	"	Lanctot & Magnan (A. Lanctot, K.C., G. Magnan)	"
Marchand, Chs. Ed.	"	Wurtele, C. J. C.	"
Robitaille, Clement	St. Sulpice	Cloutier, Romulus (Head Office, Waterloo)	Sutton
Beaulieu, J. A., St. Therese de Blainville		Giroux, F. X. A., K.C.	"
Nantel, J. B.	"	Cloutier, Romulus (Head Office, Waterloo)	Sweetsburg
Cloutier, Romulus, Head Office, Waterloo.	St. Valerien de Milton	Cotton, W. F.	"
Bournival, Edgar.	Shawinigan Falls	Giroux, F. X. A., K.C.	"
Giguere Eugene	"	Leonard, A. J. E.	"
Martel, Paul,	"	Lynch, W. H., K.C.	"
Paquette, A. E., K.C. (See card, p. 31)	"	McKeown & Boulanger (W. K. McKeown, J. Oscar L. Boulanger)	"
Belanger, L. C.	Sherbrooke	Deschamps, Sam, C.R., Thetford Mines	
Broderick, J. S., K.C.	"	Girouard, A.	"
Cabana, Chas. C.	"	Legare, T.	"
Camirand, J. A.	"	Pacaud & Taschereau (Lucien Pacaud, Ga- briel Taschereau)	"
Campbell, F., K.C.	"	Beliveau, Art.	Three Rivers
Cate, Wells & White (C. W. Cate, K.C., J. P. Wells, C. D. White)	"	Bourgeois, Charles L.	"
Duffett & Roy (J. H. Duffett, K.C., Jos. Roy, LL.B.). (See card, p. 31)	"	Bureau & Bigue (Hon. Jacques Bureau, C.R., Phi. Bigue, C. R. (See card, p. 102).	"
Forest, Lionel	"	Desilets & Desilets (Aug. Desilets, Frs. Desilets)	"
Fraser & Rugg (H. R. Fraser, K.C., F. S. Rugg)	"	Ducharme, R.	"
Gendron, L. N. A.	"	Duplessis, Maurice L.	"
Lawrence, Morris & McIver (H. D. Law- rence, W. Morris, K.C., W. E. McIver). (See card, p. 31)	"	Guillet & Lord (L. P. Guillet, K.C., Fortunat Lord, LL.M.)	"
		Langlois & Durand (Edouard Langlois, Ls. D. Durand)	"
		Marchand, Bruno	"
		Martel, P. N., K.C.	"

HON. JACQUES BUREAU, C.R.

PHILIPPE BIGUE, C.R.

BUREAU & BIGUE

Advocates, etc.

TROIS-RIVIERES, P.Q.

Methot, Geo.	Three Rivers	Codebecq, L.	Valleyfield
Paquin, L. D.	" "	Laurendeau, J. G.	"
Robichon, G. H. (<i>See</i>	" "	Plante, Arthur	"
<i>card, p. 32</i>)	" "	Payette, J. V.	Varennes
Tessier, Trahan & La-		Laliberte, W., K.C.	Victoriaville
coursiere (Hon J. A.		Cherrier, Andre	Ville Marie
Tessier, K.C., Art. Tra-		Joannette J. Honore	Ville St. Laurent
han, F. X. Lacom-	" "	Lafortune David A., K. C.	"
siere.	" "	Lavallee, Chas. H.	"
Cloutier, Romulus, Head		Cloutier, Romulus, Head	
Office, Waterloo.	Valcourt	Office, Waterloo	Waterloo
Brossoit Numa, K.C.	Valleyfield	Jacques, J. A.	"
Legault, J. A.	"	Cloutier, Romulus, Head	
		Office, Waterloo.	West Shefford

SASKATCHEWAN

Talbott, E. G.	Alsask	Crerar & Folk (J. M. Crerar,	
Archer & McLellan (H. A.		H. J. Folk).	Humboldt
Archer, P. McLellan)	Arcola	Gardiner, E.	"
Brooksmith, E. J.	"	MacIntosh, A. D.	"
Vrooman, A. E.	"	Wilson, H. G. W., K.C. Indian	Head
Williams, D. R.	Atwater	Gold, Stockan & Co. (W. J.	
Carman, R. A.	Balgonie	Gold, G. J. Stockan, Alex.	
Earle & Sparling (R. R.		Simpson).	Langham
Earle, H. G. Sparling)	Battleford	Grimmett, T. T.	Lemberg
Livingston & Atkinson (W.		Munro, J. D.	Lloydminster
W. Livingston, F. G. At-		Watkins, W. B. (<i>See card,</i>	
kinson)	"	<i>p. 32</i>)	Lumsden
Grant, A. N.	Esterhazy	Burnett, Arthur.	Maple Creek
Skelton, M. L. M.	Battleford	Goodwillie, F. B.	Melfort
Campbell, E. J.	Estevan	Hill, O. D.	"
Lockhart N. J.	"	Stewart, A. McN.	"
Moore, W. T.	"	DeRoche, H. M. P.	Melville
Perkins W. J.	"	Brandon, R. J.	Milestone
Neff, G. C.	Grenfell	Broatch, Lennox & Haig (G.	
Peel, Woolnough.	"	N. Broatch, LL.B., Chas. J.	
Alexander, E. E. (<i>See</i>		Lennox, Gordon S. Haig,	
<i>card, p. 32</i>)	Gull Lake	J. B. Haig).	Moose Jaw
Bence, F. H.	Humboldt.	Caldwell & Co. (J. E. Cald-	
		well).	"

- Chisholm & McCurdy (Jno. E. Chisholm, D. D. McCurdy). Moose Jaw
- Dunn & Spotton (W. F. Dunn, W. H. B. Spotton) "
- Gravel, Gravel & Ross (Alphonse Gravel, Emile Gravel, W. G. Ross) "
- Grayson, Armstrong & Emerson (Wm. Grayson, Chas. E. Armstrong, Thos. J. Emerson) "
- Knowles, Hare & Benson** (Wm. E. Knowles, J. H. Hare, A. Benson, B.A., LeRoy Johnson, B.A.) (*See card p. 32*). "
- Lenon, H. S. "
- McWilliams, W. J. "
- Mills Walter "
- Pickett, Schull & Schull (H. Davison Pickett, H. J. Schull, Chas. H. Schull) "
- Seaborn, Taylor, Pope & Quirk (W. E. Seaborn, G. E. Taylor, H. C. Pope, F. G. D. Quirk) "
- Torney, Thomson & Corman (F. W. Torney, E. Murray Thomson, J. W. Corman) "
- Willoughby, Craig & Co. (W. B. Willoughby, N. R. Craig W. A. Beynon) "
- Mundell, Proctor & Blain (D. Mundell, A. T. Proctor, W. M. Blain) Moosomin
- Brehaut, A. North Battleford
- Conroy, F. R. "
- Keith & Olding** (D. Keith, J. G. Olding) "
- (*See card, p. 33*). "
- Leger, J. T. "
- McHugh, Geo. O. "
- Panton, A. M. "
- Walker, W. S. "
- Murphy, J. D. Oxbow
- Adam, Fear & Mathieson (D. W. Adam, Thos. E. Fear, A. McLean Mathieson) Prince Albert
- Branon & Braithwaite (S. J. A. Branon, G. A. W. Braithwaite) "
- Gregory, Charles E., K.C. "
- Gunn & Riach (J. H. Gunn, Chas. L. Riach) "
- Halliday & Davis (F. W. Halliday, T. C. Davis) "
- Lindsay & Mudie (J. H. Lindsay, K.C., J. Stanley Mudie) Prince Albert
- Mulcaster, R. "
- Murray & Gaudet (Thos. Murray, P. A. Gaudet) "
- Philon, A. E. "
- Stirling, James "
- Adams, W. A. Qu'Appelle
- Gold, Stockan & Co. (W. J. Gold, G. J. Stockan, Alex. Simpson) Radisson
- Allan, Gordon & Gordon** (J. A. Allan K.C., LL.B., A. L. Gordon, P. H. Gordon, M.A., B.C.L., Harold M. Chase, LL.B., H. M. Allan, B.A., S. Quigg). Regina
- (*See card, p. 33*).
- Anderson, Bagshaw, McNiven & Fraser (P. Anderson, F. B. Bagshaw, Donald A. McNiven, Douglas Fraser) "
- Balfour, Casey & Co.** (James Balfour, W. M. Martin, M.P., Avery Casey, B.C.L., C. W. Hoffman, L. L. Dawson, G. A. Colquhoun, S. F. Arthur) "
- (*See card, p. 33*).
- Barr, Stewart, Johnston & Cumming** (Geo. H. Barr, P. S. Stewart, C. M. Johnston, Wm. P. Cumming). "
- (*See card, p. 34*).
- Bigelow, Graham & Kinsman (H. V. Bigelow, K.C., B. T. Graham, Wm. R. Kinsman) "
- Blain & Blain (W. M. Blain, Thos. J. Blain). "
- Brown, Thomson & MacLean (T. D. Brown, Harold Thomson A. L. MacLean) "
- Bryant & Wheat (J. F. Bryant, F. G. Wheat) "
- Carrothers & Williams (Ashton D. Carrothers, E. S. Williams) "
- Cross, Jonah, Hugg & Forbes** (J. A. Cross, E. B. Jonah, R. W. Hugg, G. W. Forbes, V. R. Smith). (*See card, p. 34*). "
- Doerr & Guggisberg (J. E. Doerr, W. W. Guggisberg). "
- Embury, Scott & MacKinnon** (J. F. L. Embury, K.C., W. B. Scott, B.A., A. G. MacKinnon, B.A., Walter R. Mott, H. A. Rutherford). (*See card, p. 34*). "

K.C., G. A. Ferguson, B.A.) . Regina	Gold, Stockan & Co. (W. J.
K.C., G. A. Ferguson, B.A.) "	Gold, J. G. Stockan, Alex.
Fisher, A. Allan "	Simpson) Saskatoon
Froste & Gee (H. B. Froste,	Hartney, Russell "
E. A. Gee) "	Irvine, C. A. "
MacKenzie, Brown, Thom, Mc-	Jermyn & Sibbald (Jno.
Morran, MacDonald, Bastedo	W. Jermyn, Andrew S. Sib-
& Jackson (Norman Mac-	bald) "
Kenzie, K.C., Hon. George	Locke, C. G. "
W. Brown, Douglas J. Thom,	Lynd, Gilchrist & Hogarth
H. Y. MacDonald, K.C., T.	(T. A. Lynd, W. A. Gil-
Sydney McMorrin, F. L.	christ, R. F. Hogarth) "
Bastedo, E. Jackson, H. Ward	McCraney, MacKenzie &
J. W. Blyth) "	Hutchinson (G. E. Mc-
McMurchy, R. D. "	Craney, P. E. Mackenzie,
Martin & McEwen (John D.	K.C., A. W. Hutchinson) "
Martin, W. H. McEwan) "	MacDonald & Stewart (B. D.
Ring & Brandon (L. B. Ring,	MacDonald, A. M. Ste-
R. J. Brandon) "	wart) "
Ross, Hogarth & Coxworth	MacIntosh & Simpson (John
(Alex. Ross, K.C., B. D.	MacIntosh, Alex. Simp-
Hogarth, G. E. Coxworth) "	son) "
St. James & McPheeter (E. A.	MacLean, Hollinrake, Moxon
St. James, Edwin McPheeter) "	& Squires (Donald Mac-
Tingley & Curtin (A. R. Tingley,	Lean, Charles E. Hollin-
S. R. Curtin) "	rake, Arthur Moxon, Bea-
Turgeon, Brown & Thomson	ton H. Squires) "
(Hon. W. T. A. Turgeon, K.C.	Mather, John A. "
T. D. Brown, H. T. Thomson,	Milden, John "
and A. L. McLean) "	Miliken, R. H. "
Turnbull & Goetz (F. W.	Moxon, Arthur "
Turnbull, W. A. Goetz) "	Morton & Tanner (T. P.
Turnbull & McCausland, (R. E.	Morton, P. D. Tanner) "
Turnbull, M. McCausland) "	Morse & Morse (C. R. Morse,
Brown, J. D. Rosthern	W. D. Morse) "
Lussier, J. E. "	Murray & Munroe (George
Acheson, Durie & Wake-	Murray, John Munroe) "
ling (Herbert Acheson,	Russell, E. J. & Co. "
C. L. Durie, B.A., B. M.	Squires, Beaton H. "
Wakeling). (<i>See card, p.</i>	Thomson, Kennedy & Hord
<i>35</i>) Saskatoon	(Levi Thomson, D. P. Ken-
Bence, Stevenson & Mc-	nedy, A. H. Hord) Sintaluta
Lorg (A. E. Bence, J. M.	Bothwell & Campbell
Stevenson, F. H. McLorg)	(C. E. Bothwell, R. S.
(<i>See card, p. 35</i>) "	Campbell) Swift Current
Borland, McIntyre, Mc-	Begg & Hayes (James
Aughey & Mowat (Fred M.	O. Begg, F. C. Hayes,
Borland, A. Murray Mc-	LL.B.). (<i>See card,</i>
Intyre, John McAughey,	<i>p. 35</i>) "
James S. Mowat) "	Buckles, Donald, Mac-
Cruise & Tufts (George A.	Pherson, Thomson
Cruise) "	& McWilliam (D.
Davis & Yule (R. W. Davis,	Buckles, R. F. Donald,
G. H. Yule) "	M. A. MacPherson,
Ferguson & McDermid (J. D.	LL.B., W. M. Thom-
Ferguson, F. F. McDer-	son, A. McWilliam,
mid) "	B.B.) (<i>See card, opp.</i>) " "

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 (Robert Maulson, H.
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 Black, Hilliar & Miller (O.
 S. Black, T. H. Hilliar, M.
 E. Miller). Weyburn
 Finn & Jolly (D. A. Finn.
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 Graham, James "
 Martin & Rose (W. M. Rose,
 J. C. Martin). "
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 phy, M. A. Miller). "

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 Cole, D. H. Wolseley
 Thomson, Kennedy & Hord
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 nedy, A. H. Hord). "
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 Parsons, W. R. "
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 Walton, W. S. "

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 Fraser, J. A. "
 Maurice Panet "

O'Neill, J. A. W. Dawson
Smith, J. P. (*See card, p. 45*). "
 Tabor, C. W. C. "
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See card p. 36

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See card p. 36

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GUS. C. EDWARDS,

See card p. 36

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CRATTY BROS. & FLATAU,

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B. J. CAVANAGH,

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See card p. 37

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MALOY & BRADY,

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See card p. 37

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See card p. 38

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DOUGLAS, EAMAN & BARBOUR,

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See card p. 38

MINNEAPOLIS, MINN.

STEVENS & STEVENS,

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See card p. 38

ST. PAUL, MINN.

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See card p. 39

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See card p. 39

ST. LOUIS, MO.

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555-8 Pierce Bldg.
See card p. 39

BUTTE, MONT.

VICTOR A. BERRY,

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See card p. 39

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MONTGOMERY, HALL & YOUNG,

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NEW YORK, N.Y.

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140 Nassau Street

See card p. 40

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See card p. 41

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See card p. 41

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CARROLL & MASON,
903-908 Gallais Bldg.

See card p. 41

MUSKOGEE, OKLAHOMA.

ARTHUR KAYSER,

See card p. 41

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BYRON, LONGBOTTOM & PAPE,
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See card p. 42

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See card p. 42

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See card p. 42

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See card p. 43

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FULTON & FULTON,
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See card p. 43

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See card p. 43

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H. W. GOODWYN,
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See card p. 43

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See card p. 44

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Fendall Bldg.

See card p. 44

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See card p. 44

SEATTLE, WASH.

RYAN & DESMOND,
1311-13 Alaska Bldg.

See card p. 44

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See card p. 45

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See card p. 46

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THOMAS J. McGRATH,

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See card p. 46

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See card p. 46

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See card p. 12

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vignac, J. P. Lanctot)	"	che)	"
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De Salaberry Henri	"	Kittson, Reddy & Reddy	"
Desaulniers Edmond	"	(Wm. B. S. Reddy,	"
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lips)	"	Lacasse P. C.	"
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deau)	"	Ladouceur B. N.	"
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Forgues L. S.	"	Lavoie Isidore Raoul	"

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Legault J. A.	"	Paquin & Poitras (J. A. Paquin, T. A. Poitras) . .	"
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Legault J. A.	"	Payette J. H.	"
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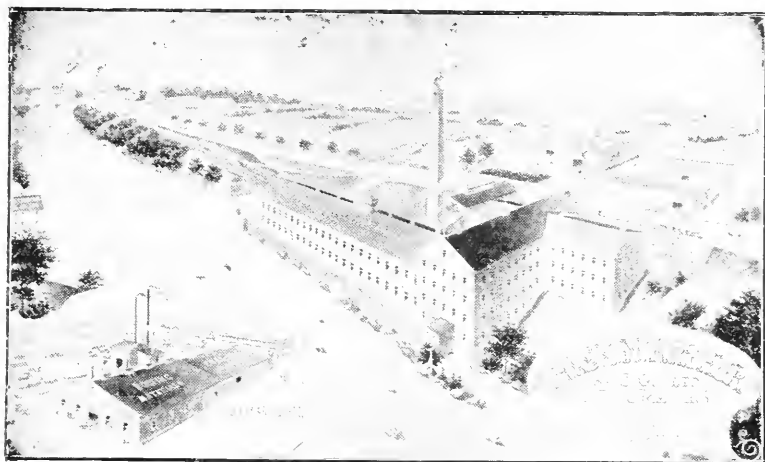
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 2 Gaudet W. Ste. Ludger, Q.
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 21 Lacasse F. X. . . . St. Marguerite, Q.
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 3 Lecuyer T. St. Martine, Q.
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 8 Labreche Jos.,
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†Woodin, L. A.	"	lifour)	"
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Richardson Sinclair G. . .	"	and J. N. Cabana)	"
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†Booker, A. A.	London, O.	muel Cushing, †Chas.	"
		A. Hodgson)	"

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gin)	"	Glover)	"

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Imperial Bank of Canada.	Bolton, O.	Canadian Bank of Commerce.	"
Bank of Nova Scotia, Bonavista, Nfld.		Royal Bank of Canada,	"
Standard Bank of Canada,		Canadian Bank of Commerce,	
Bond Head, O.		Briercrest, Sask.	
Bank of Nova Scotia,		Bank of Nova Scotia.	Brigden, O.
Bonne Bay, Nfld.		Standard Bank of Canada, Bright, O.	
Northern Crown Bank.	Borden, Sask.	Standard Bank of Canada, Brighton, O.	
Merchants Bank of Canada,		Bank of Nova Scotia, Brigus, Nfld	
Bothwell, O.		Imperial Bank of Canada,	
Bank of British North America,		Broadview, Sask.	
Boucherville, Que.		Northern Crown Bank.	Brook, Sask.
Banque Provinciale.	"	Bank of Montreal.	Brockville, O.
Union Bank of Canada, Bounty, Sask.		Bank of Nova Scotia.	"
Union Bank of Canada, Bowden, Alta.		Bank of Toronto.	"
Bank of British North America,		Canadian Bank of Commerce,	"
Bow Island, Alta.		Molson Bank.	"
Union Bank of Canada	"	Northern Crown Bank	"
Bank of Montreal.	Bowmanville, O.	Canadian Bank of Commerce,	
Royal Bank of Canada,	"	Broderick, Sask.	
Standard Bank of Canada	"	Bank of British North America,	
Bank of Ottawa.	Bracebridge, O.	Bromhead, Sask.	
Northern Crown Bank	"	Merchants Bank of Canada, Bronte, O.	
Bank of Toronto.	Bradford, O.	Sterling Bank of Canada,	
Standard Bank of Canada	"	Brookdale, Man.	
Bank of Hamilton, Bradwardine, Man.		Standard Bank of Canada,	
Dominion Bank.	Brampton, O.	Brooklin, O.	
Merchants Bank of Canada	"	Merchants Bank of Canada,	
Union Bank of Canada.	"	Brooks, Alta.	
Bank of British North America,		Union Bank of Canada	"
Brandon, Man.		Bank of Hamilton, Brownlee, Sask.	
Bank of Hamilton.	"	Banque Provinciale du Canada,	
Bank of Montreal.	"	Brownsburg, Q.	
Canadian Bank of Commerce,	"	Royal Bank of Canada,	
Dominion Bank.	"	Brownsville, O.	
Imperial Bank of Canada,	"	Molsons Bank.	Brucefield, O.
Merchants Bank of Canada,	"	Royal Bank of Canada,	
Northern Crown Bank	"	Bruce Mines, O.	
Royal Bank of Canada.	"		

Union Bank of Canada.	Bruno, Sask.	Standard Bank of Can-	
Union Bank of Canada,		ada.	Calgary, Alta.
Bruderheim, Alta.		Union Bank of Canada.	"
Bank of Nova Scotia.	Brussels, O	Bank of Ottawa.	Calumet, Q.
Standard Bank of Canada	"	Standard Bank of Canada,	
Union Bank of Canada,		Camden East, O.	
Buchanan, Sask.		Bank of British North America,	
Bank of Montreal.	Buckingham, Q.	Campbellford, O.	
Bank of Ottawa.	"	Standard Bank of Canada,	"
Royal Bank of Canada.	Buctouche, N.B.	Bank of Nova Scotia,	
Union Bank of Canada.	Bulyea, Sask.	Campbellton, N.B.	
Standard Bank of Canada.		Canadian Bank of Commerce,	"
Burdett, Alta.		Royal Bank of Canada,	
Bank of Toronto.	Burford, O.	Bank of Nova Scotia, Campbellville, O.	
Northern Crown Bank.	"	Bank of Ottawa, Campbell's Bay, Q.	
Bank of Nova Scotia.	Burgeo, Nfld.	Merchants Bank of Canada,	
Bank of Nova Scotia.	Burin, Nfld.	Camrose, Alta.	
Royal Bank of Canada, Burk's Falls, O.		Molsons Bank.	"
Bank of Hamilton.	Burlington, O.	Royal Bank of Canada.	"
Royal Bank of Canada	"	Union Bank of Canada, Canfield, O.	
Merchants Bank of Canada, Bury, Q		Bank of Nova Scotia., Canning, N.S.	
Banque d'Hochelega.	Cabano	Home Bank of Canada., Cannington, O.	
Union Bank of Canada.	Cabri, Sask	Standard Bank of Canada	"
Home Bank of Canada.		Canadian Bank of Commerce	
Northern Crown Bank, Cadillac, Sask.		Canora, Sask.	
Bank of British North America,		Union Bank of Canada	"
Cainsville, O.		Bank of Montreal.	Canso, N.S.
Bank of Hamilton.	Caledonia, O	La Banque Nationale,	
Standard Bank of Canada,	"	Cap de la Madeleine, Q.	
Bank of British North America,		La Banque Nationale,	
Calgary, Alta.		Cap St. Ignace, Q.	
Bank of Hamilton.	"	Banque Provinciale du Canada	
Bank of Montreal.	"	Caraget, N.B.	
Bank of Nova Scotia.	"	Bank of Hamilton.	Carberry, Man.
Bank of Nova Scotia,		Merchants Bank of Canada	"
West End,	"	Union Bank of Canada.	"
Bank of Toronto	"	Bank of Nova Scotia, Carbonear, Nfld.	
Canadian Bank of Com-		Bank of Toronto.	Cardinal, O.
merce.		Bank of Montreal.	Cardston, Alta.
Canadian Bank of Com-		Royal Bank of Canada	"
merce 1202 1st St. W.	"	Union Bank of Canada	"
Canadian Bank of Com-		Royal Bank of Canada.	Cargill, O.
merce, 1230 9th Ave. E.	"	Bank of Hamilton.	Carievale, Sask.
Canadian Bank of Com-		Bank of Ottawa.	Carleton Place, O.
merce, Mount Royal.	"	Union Bank of Canada	"
Dominion Bank.	"	Union Bank of Canada.	Carlyle, Sask.
Dominion Bank.	"	Bank of Hamilton.	Carman, Man.
Imperial Bank of Can-		Canadian Bank of Commerce	"
ada.		Union Bank of Canada	"
Imperial Bank of Can-		Canadian Bank of Commerce,	
ada, East End.	"	Carmangay, Alta.	
Merchants Bank of Can-		Merchants Bank of Canada,	
ada.	"	Carnduff, Sask.	
Molsons Bank.	"	Bank of Hamilton.	Caron, Sask.
Northern Crown Bank.	"	Bank of Ottawa.	Carp, O.
Royal Bank of Canada,	"	Union Bank of Canada, Carroll, Man.	
Royal Bank of Canada,		Merchants Bank of Canada,	
3rd St. West.	"	Carstairs, Alta.	
		Union Bank of Canada,	"

Bank of Toronto. ..Cartwright, Man.
Bank of Ottawa Casselman, O.
Banque d'Hochelaga. "
Standard Bank of Canada. Castleton, O.
Merchants Bank of Canada,

Castor, Alta.
Royal Bank of Canada. "
Bank of Nova Scotia. .Catalina, Nfld.
Bank of Hamilton. . . .Cayley, Alta.
Canadian Bank of Commerce,

Cayuga, O.
Canadian Bank of Commerce,

Central Butte, Sask.
Bank of Nova Scotia, Centreville, N.B.
Union Bank of Canada, Cereal, Alta.
Bank of British North America,

Ceylon, Sask.
Banque d'Hochelaga.Chambly
Bank of Hamilton . . .Champion, Alta.
Canadian Bank of Commerce, "
Banque Provinciale du Canada,

Champlain, Q.
Bank of Nova Scotia. . . .Chandler, Q.
Bank of Nova Scotia. .Channel, Nfld.
Royal Bank of Canada. .Chapleau, O.
Bank of Toronto. . . .Chaplin, Sask.

Bank of Montreal, Charlottetown, P.E.I.
Bank of Nova Scotia, "
Canadian Bank of Commerce "
Royal Bank of Canada, "
Merchants Bank of Canada,

Chateauguay Basin, Q.
Bank of Montreal. . . .Chatham, O.
Canadian Bank of Commerce, "
Dominion Bank "

Merchants Bank of Canada, "
Standard Bank of Canada "
Bank of Montreal . . .Chatham, N.B.
Bank of Nova Scotia. . . . "
Merchants Bank of Canada,

Chatsworth, O.
Merchants Bank of Canada,
 Chauvin, Alta.

Standard Bank of Canada,
 Cherry Valley, O.
Bank of Hamilton. . . .Chesley, O.
Merchants Bank of Canada "

Bank of Nova Scotia, Chester, N.S.
Bank of Ottawa. . . .Chesterville, O.
Molsons Bank. "
La Banque Nationale .Chicoutimi, Q.

Molsons Bank "
Bank of Montreal . .Chilliwack, B.C.
Canadian Bank of Commerce "
Merchants Bank of Canada, "
Royal Bank of Canada "
Union Bank of Canada. Chinook, Alta.
Merchants Bank of Canada,

Chipman, Alta.

Bank of Nova Scotia, Chipman, N.B.
Royal Bank of Canada, Chippawa, O.
Standard Bank of Canada,

Claremont, O.
Banque Provinciale du Canada,
 Clarence Creek, O.
Canadian Bank of Commerce,

Clarenceville, Q.
Canadian Bank of Commerce,
 Claresholm, Alta.

Union Bank of Canada "
Merchants Bank of Canada,

Clarkson, O.
Royal Bank of Canada . .Clifford, O.
Molsons Bank.Clinton, O.
Royal Bank of Canada "

Bank of Montreal. .Cloverdale, B.C.
Union Bank of Canada. .Cluny, Alta.
Standard Bank of Canada.

Coalhurst, Alta.
Canadian Bank of Commerce,

Coaticook, Q.
La Banque Nationale. "
Royal Bank of Canada. "

Bank of Ottawa Cobalt, O.
Bank of Toronto "
Canadian Bank of Commerce "
Imperial Bank of Canada. "

Bank of Ottawa.Cobden, O.
Bank of Nova Scotia, Cobourg, O.
Bank of Toronto. "
Dominion Bank "

Standard Bank of Canada "
Union Bank of Canada, Cochrane, Alta.
Bank of OttawaCochrane, O.
Imperial Bank of Canada "

Bank of Toronto. . . .Colborne, O.
Standard Bank of Canada "
Bank of TorontoColdwater, O.
Canadian Bank of Commerce,

Coleman, Alta.
Weyburn Security Bank, Colgate, Sask.
Bank of Montreal. . .Collingwood, O.
Bank of Toronto. "

Canadian Bank of Commerce, "
Merchants Bank of Canada, "
Royal Bank of Canada, "

Bank of Toronto . . .Colonsay, Sask.
Northern Crown Bank. .Comber, O.
Canadian Bank of Commerce, "

Compton, Q.
Royal Bank of Canada, Conquest, Sask.
Bank of Nova Scotia. . .Consecon, O.
Union Bank of Canada, Consort, Alta.

Bank of Montreal. . .Cookshire, Q.
Canadian Bank of Commerce "
Union Bank of Canada, Cookstown, O.
Union Bank of Canada, Cooksville, O.

Bank of Toronto . .Copper Cliff, O.

Bank of Montreal	Cornwall, O.	Bank of Montreal. . . .	Dauphin, Man.
Canadian Bank of Commerce	"	Bank of Ottawa	"
Royal Bank of Canada . . .	"	Canadian Bank of Commerce	"
Sterling Bank of Canada . .	"	Union Bank of Canada	"
Bank of Toronto, Coronation, Alta.		Bank of British North America,	
Merchants Bank of Canada	"	Davidson, Sask.	
Banque Provinciale du Canada,		Royal Bank of Canada	"
Coteau Station, Q.		Bank of British North America,	
Canadian Bank of Commerce,		Dawson, Yukon.	
Courtenay, B.C.		Canadian Bank of Commerce,	
Royal Bank of Canada.	"	Dawson City, Yukon.	
Sterling Bank of Canada,		Merchants Bank of Canada,	
Courtright, O.		Daysland, Alta.	
Canadian Bank of Commerce,		Home Bank of Canada, Delaware, O.	
Cowansville, Q.		Merchants Bank of Canada,	
Molsons Bank.	"	Delburne, Alta.	
Union Bank of Canada, Cowley, Alta.		Bank of Hamilton.	Delhi, O.
Royal Bank of Canada, Craigmyle, Alta.		Molsons Bank.	"
Royal Bank of Canada, Craik, Sask.		Canadian Bank of Commerce,	
Union Bank of Canada . . .	"	Delia, Alta.	
Canadian Bank of Commerce,		Canadian Bank of Commerce,	
Cranbrook, B.C.		Delisle, Sask.	
Imperial Bank of Canada. .	"	Royal Bank of Canada	"
Royal Bank of Canada, . .	"	Dominion Bank	Deloraine, Man.
Northern Crown Bank, Crandall, Man.		Union Bank of Canada,	"
Canadian Bank of Commerce,		Merchants Bank of Canada, Delta, O.	
Crediton, O.		Imperial Bank of Canada,	
Bank of Toronto.	Creemore, O.	Denholm, Sask.	
Merchants Bank of Canada,	"	Royal Bank of Canada, Denzil, Sask.	
Canadian Bank of Commerce,		La Banque Nationale, Deschailions, Q.	
Creston, B. C.		La Banque Nationale, Deschambault, Q.	
Canadian Bank of Commerce,		Bank of Montreal.	Deseronto, O.
Crossfield, Alta.		Standard Bank of Canada	"
Union Bank of Canada . . .	Crysler, O.	Royal Bank of Canada,	
Home Bank of Canada,		Didsbury, Alta.	
Crystal City, Man		Union Bank of Canada	"
Union Bank of Canada,	"	Bank of Nova Scotia. . . .	Digby, N.S.
Canadian Bank of Commerce,		Royal Bank of Canada. . .	"
Cudworth, Sask.		Union Bank of Canada,	
Canadian Bank of Commerce,		Dinsmore, Sask.	
Cumberland, B.C.		Banque Provinciale du Canada,	
Royal Bank of Canada,	"	D'Israeli, Que	
Union Bank of Canada. . .	Cupar, Sask.	Merchants Bank of Canada,	
Bank of Montreal	Curling, Nfld.	Donalda, Alta.	
Union Bank of Canada, Cut Knife, Sask		Royal Bank of Canada,	
Union Bank of Canada,		Dorchester, N.B.	
Cypress River, Man.		Bank of Toronto	Dorchester, O.
Bank of Nova Scotia, Dalhousie, N.B.		Merchants Bank of Canada, Douglas, O.	
Royal Bank of Canada,	"	Royal Bank of Canada, Drayton, O.	
Union Bank of Canada,		Canadian Bank of Commerce,	
Dalhousie Station, Q.		Dresden, O.	
Bank of Montreal.	Danville, Q.	Dominion Bank.	"
Canadian Bank of Commerce, .		Canadian Bank of Commerce,	
Bank of British North America,		Drinkwater, Sask.	
Darlingford, Man.		Molsons Bank.	Drumbo, O.
Bank of Nova Scotia, Dartmouth, N.S.		Standard Bank of Canada,	
Royal Bank of Canada. . . .	"	Drumheller, Alta.	
		Banque Provinciale du Canada,	
		Drummondville, Q.	

Canadian Bank of Commerce, Drummondville, Q.	Canadian Bank of Com- merce, Strathcona, Edmonton, Alta.
Molsons Bank.	Dominion Bank
Royal Bank of Canada. . Dryden, O.	Imperial Bank of Can- ada , West End.
Standard Bank of Canada, Dublin, O.	Imperial Bank of Can- ada
Northern Crown Bank, Dubuc, Sask.	Merchants Bank of Can- ada, Namayo Av.
Bank of British North America, Duck Lake, Sask.	Merchants Bank of Can- ada, Jasper Ave
Union Bank of Canada, Dummer, Sask.	Molsons Bank.
Bank of British North America, Duncan, B.C.	Northern Crown Bank
Canadian Bank of Commerce, "	Royal Bank of Canada.
Bank of Hamilton. . . . Dundalk, O.	Royal Bank of Canada, South Br.
Union Bank of Canada "	Standard Bank of Canada, "
Bank of Hamilton. . . . Dundas, O.	Union Bank of Canada, "
Royal Bank of Canada, "	Banque Provinciale du Canada, Edmundston, N.B.
Royal Bank of Canada	Royal Bank of Canada, "
Bank of Hamilton. . . Dundurn, Sask.	Merchants Bank of Canada, Eganville, O.
Northern Crown Bank "	Bank of Montreal Eglinton, O.
Sterling Bank of Canada, Dungannon, O.	Union Bank of Canada
Canadian Bank of Commerce, Dunham, Q.	Canadian Bank of Commerce Elbow, Sask.
Bank of Hamilton. . . . Dunnville, O.	Canadian Bank of Commerce, Elfrs, Sask.
Canadian Bank of Commerce, "	Canadian Bank of Commerce, Elgin, Man.
Union Bank of Canada "	Merchants Bank of Canada, Elgin, O.
Bank of Hamilton . . . Dunrea, Man.	Canadian Bank of Commerce, Elkhorn, Man.
Royal Bank of Canada. . Durham, O.	Bank of Hamilton, Elm Creek, Man.
Standard Bank of Canada "	Bank of Nova Scotia. . . . Elmira, O.
Molsons Bank. Dutton, O.	Royal Bank of Canada.
Royal Bank of Canada.	Bank of Toronto Elmvale, O.
Northern Crown Bank, Duval, Sask.	Standard Bank of Canada "
Royal Bank of Canada, Dysart, Sask.	Royal Bank of Canada, Elmwood, O.
Northern Crown Bank, Earl Grey, Sask.	Union Bank of Canada, Elnora, Alta.
Canadian Bank of Commerce, East Angus, Q.	Merchants Bank of Canada, Elora, O.
La Banque Nationale,	Royal Bank of Canada.
Union Bank of Canada, Eastend, Sask.	Royal Bank of Canada, Elrose, Sask.
Bank of Nova Scotia, East Florenceville, N.B.	Royal Bank of Canada. . . Embro, O.
Canadian Bank of Commerce, Eastman, Q.	Royal Bank of Canada . . Embrun, O.
Royal Bank of Canada, Eburne, B.C.	Bank of Ottawa. Emerson, Man.
Canadian Bank of Commerce, Edam, Sask.	Canadian Bank of Commerce, Emo, O.
Merchants Bank of Canada, Edgerton, Alta.	Union Bank of Canada, Empress, Alta.
Bank of British North America, Edmonton, Alta	Bank of Montreal Enderby, B.C.
Bank of Montreal.	Union Bank of Canada, Englehart, O.
Bank of Nova Scotia	Northern Crown Bank, Enterprise, O.
Bank of Ottawa.	Union Bank of Canada. . . . Erin, O.
Banque d'Hochelaga	Royal Bank of Canada, Erskine, Alta.
Canadian Bank of Com- merce.	Bank of British North America, Esquimalt, B.C.
	Imperial Bank of Canada. . . . Essex, O.
	Union Bank of Canada.

Union Bank of Canada.		Standard Bank of Canada,	
	Esterhazy, Sask.	Fort Saskatchewan, Sask.	
Bank of British North America,		Union Bank of Canada,	
	Estevan, Sask.	Fort Saskatchewan, Alta.	
Bank of Hamilton	"	Bank of Hamilton, Fort William, O.	
Union Bank of Canada.	"	Bank of Montreal,	"
Standard Bank of Canada. Eston, Sask.		Bank of Nova Scotia	"
Standard Bank of Canada.		Bank of Ottawa.	"
	Estuary, Sask.	Canadian Bank of	
Union Bank of Canada. Etzikom, Alta.		Commerce.	"
Canadian Bank of Commerce,		Dominion Bank	"
	Exeter, O.	Imperial Bank of	
Molsons Bank.	"	Canada.	"
Union Bank of Canada. Eyebrow, Sask.		Merchants Bank of	
Bank of Nova Scotia,		Canada.	"
	Fairville, N.B.	Royal Bank of Can-	
Banque d'Hochelega.	Farnham, Q.	ada.	"
Canadian Bank of Commerce, "		Union Bank of Can-	
Bank of British North America,		ada.	"
	Fenelon Falls, O.	Banque d'Hochelega.	Fournier, O.
Bank of Montreal	"	Standard Bank of Canada, Foxboro, O.	
Union Bank of Canada, Fenwick, O.		Bank of Hamilton, Fox Warren, Man.	
Imperial Bank of Canada, Fergus, O.		Bank of Hamilton.	Francis, Sask.
Royal Bank of Canada.	"	Molsons Bank.	Frankford, O.
Canadian Bank of Commerce.		Bank of Montreal	Fraserville, Q.
	Fernie, B.C.	Banque Provinciale du	
Home Bank of Canada	"	Canada.	"
Imperial Bank of Canada	"	La Banque Nationale,	"
Union Bank of Canada, Fillmore, Sask.		Molsons Bank.	"
Merchants Bank of Canada. Finch, O.		Bank of British North America,	
Northern Crown Bank, Fleming, Sask.		Fredericton, N.B.	
Standard Bank of Canada,		Bank of Montreal.	"
	Flesherton, O.	Bank of Nova Scotia.	"
Northern Crown Bank, Florence, Ont.		Canadian Bank of Com-	
Northern Crown Bank,		merce	"
	Foam Lake, Sask.	Royal Bank of Canada	"
Bank of Nova Scotia.	Foge, Nfld.	Bank of Toronto.	Freelton, O.
Imperial Bank of Canada, Fonthill, O.		Canadian Bank of Commerce,	
Canadian Bank of Commerce. Ford, O.		Frelighsburg, Q.	
Merchants Bank of Canada.		Merchants Bank of Canada,	
	Ford City, O.	Frobisher, Sask.	
Bank of Hamilton.	Fordwich, O.	Royal Bank of Canada, Gadsby, Alta.	
Union Bank of Canada,		Bank of Nova Scotia, Gagetown, N.B.	
	Foremost, Alta.	Merchants Bank of Canada,	
Canadian Bank of Commerce,		Gainsborough, Sask.	
	Forest, O.	Merchants Bank of Canada,	
Molsons Bank.	"	Galahad, Alta.	
Standard Bank of Canada.	"	Bank of Toronto	Galt, O.
Merchants Bank of Canada,		Canadian Bank of Commerce, "	
	Forestburg, Alta.	Imperial Bank of Canada.	"
Royal Bank of Canada, Forget, Sask.		Merchants Bank of Canada.	"
Bank of Ottawa.	Fort Coulonge, Q.	Royal Bank of Canada.	"
Sterling Bank of Canada, Fort Erie, O.		Union Bank of Canada.	"
Canadian Bank of Commerce,		Bank of Toronto.	Gananoque, O.
	Fort Frances, O.	Merchants Bank of Canada,	"
Dominion Bank	"	Bank of Toronto.	Gaspe, Q.
Imperial Bank of Canada,		La Banque Nationale.	"
	Fort Qu'Appelle, Sask.	Banque Provinciale du Canada,	
		Gentilly, Q.	

Bank of Hamilton...Georgetown, O.	Royal Bank of Canada,
Merchants Bank of Canada, "	Grand Valley, O.
Canadian Bank of Commerce,	Union Bank of Canada,
Gilbert Plains, Man.	Grande Prairie, Alta.
Sterling Bank of Canada, "	Canadian Bank of Commerce,
Bank of British North America,	Grandview, Man.
Girvin, Sask	Home Bank of Canada
Bank of Montreal...Glace Bay, N.S.	Merchants Bank of Canada,
Bank of Nova Scotia, "	Granton, O.
Royal Bank of Canada	Bank of Hamilton, Granum, Alta.
Bank of Hamilton, Gladstone, Man.	Canadian Bank of Commerce "
Merchants Bank of Canada,	Union Bank of Canada,
Gladstone, Man	Grassy Lake, Alta.
Canadian Bank of Commerce,	Bank of Toronto, Gravelbourg, Sask.
Geichen, Alta.	Banque d'Hochelaga . . . "
Royal Bank of Canada, "	Union Bank of Canada, "
Bank of Toronto . . .Glenavon, Sask.	Dominion Bank . . .Gravenhurst, O.
Northern Crown Bank, Glenboro, Man.	Bank of Montreal...Greenwood, B.C.
Union Bank of Canada, "	Canadian Bank of Commerce, "
Merchants Bank of Canada,	Dominion Bank "
Glencoe, O.	Bank of Ottawa, . . .Grenville, Q.
Royal Bank of Canada, . . . "	Weyburn Security Bank,
Northern Crown Bank,	Griffin, Sask.
Glen Ewen, Sask	Bank of Hamilton...Grimsby, O.
Bank of Montreal . . .Goderich, O.	Canadian Bank of Canada, "
Canadian Bank of Commerce, "	Union Bank of Canada, . . . "
Sterling Bank of Canada	Royal Bank of Canada, . . . "
Union Bank of Canada.... "	Bank of MontrealGuelph, O.
Canadian Bank of Commerce,	Bank of Nova Scotia "
Golden, B.C.	Canadian Bank of Commerce, "
Imperial Bank of Canada	Dominion Bank, "
Home Bank of Canada,	Merchants Bank of Canada "
Goodlands, Man.	Royal Bank of Canada "
Merchants Bank of Canada,	Union Bank of Canada "
Gore Bay, O	Union Bank of Canada, Guernsey, Sask.
Bank of Hamilton...Gorrie, O.	Merchants Bank of Canada,
Northern Crown Bank, Govan, Sask.	Gull Lake, Sask.
Royal Bank of Canada "	Union Bank of Canada "
Standard Bank of Canada, Grafton, O.	Royal Bank of Canada, Guysboro, N.S.
Merchants Bank of Canada,	Canadian Bank of Commerce,
Grainger, Alta.	Haffow, Sask.
Bank of MontrealGranby, Q.	Union Bank of Canada,
Bank of Ottawa, "	Hagenmore, Sask.
Banque d'Hochelaga...	Bank of Hamilton...Hagersville, O.
Canadian Bank of Commerce	Union Bank of Canada, "
Bank of Nova Scotia,Grand Bank, Nfld.	Imperial Bank of Canada, Hague, Sask.
Bank of Montreal,Grand Falls, Nfld.	Banque d'Hochelaga .Haileybury, O.
Bank of Montreal, Grand Falls, N.B.	Bank of Ottawa "
Royal Bank of Canada, "	Royal Bank of Canada, "
Canadian Bank of Commerce,	Union Bank of Canada
Grand Forks, B.C	Weyburn Security Bank,
Royal Bank of Canada	Halbrite, Sask.
Bank of Nova Scotia,	Bank of British North America,
Grand Manan, N.B.	Halifax, N.S.
Bank of Montreal...Grand'Mere, Q	Bank of Montreal,
La Banque Nationale	North End Branch, "
Merchants Bank of Canada, "	Bank of Montreal, "
La Banque Nationale	Bank of Nova Scotia, "
Grand River, Q.	

Bank of Nova Scotia, Barrington St.	Halifax, N.S.	Molsons Bank, James St. Hamilton, O.	
Bank of Nova Scotia, North End.	"	Molson Bank (Market Br.)	"
Canadian Bank of Commerce.	"	Royal Bank of Canada, Market Branch.	"
Merchants Bank of Canada.	"	Royal Bank of Canada, King St.	"
Royal Bank of Canada, Royal Bank of Canada, South End.	"	Royal Bank of Canada, East End Branch.	"
Royal Bank of Canada, Buckingham St. Br.	"	Royal Bank of Canada, John St.	"
Royal Bank of Canada North End Br.	"	Standard Bank of Canada	"
Union Bank of Canada	"	Union Bank of Canada.	"
Royal Bank of Canada, Halkirk, Alta.		Union Bank of Canada, East End	"
Bank of British North America, Hamilton, O		Union Bank of Canada, . . .	"
Bank of British North America, Westinghouse Ave.	"	Locke St.	"
Bank of British North America, Victoria Ave. .	"	Bank of Hamilton, Locke St., Hamiota, Man.	
Bank of Hamilton, Head Office, <i>see ad.</i> p. 111.	"	Union Bank of Canada	"
Bank of Hamilton, Barton, St. Br.	"	Bank of Nova Scotia, Hampton, N.B.	
Bank of Hamilton, Deering Br.	"	Northern Crown Bank . Hanley, Sask.	
Bank of Hamilton, East End Br.	"	Canadian Bank of Commerce, Hanna, Alta.	
Bank of Hamilton North End Br.	"	Union Bank of Canada . . .	"
Bank of Hamilton, West End.	"	Merchants Bank of Canada,	
Bank of Montreal. . . .	"	Hanover, O	
Bank of Montreal, Barton Victoria.	"	Royal Bank of Canada . . .	"
Bank of Nova Scotia . . .	"	Bank of Nova Scotia,	
Bank of Nova Scotia, King and Sherman. . .	"	Harbor Grace, Nfld	
Bank of Toronto	"	Newfoundland Savings Bank, "	
Canadian Bank of Commerce.	"	Canadian Bank of Commerce, Hardisty, Alta.	
Dominion Bank.	"	Bank of Nova Scotia, Harrietsville, O.	
Dominion Bank, East End Br.	"	Northern Crown Bank, Harris, Sask.	
Imperial Bank of Canada.	"	Royal Bank of Canada . Harriston, O.	
Merchants Bank of Canada.	"	Standard Bank of Canada	"
Merchants Bank of Canada, King St. East. .	"	Imperial Bank of Canada, Harrow, O.	
Molsons Bank.	"	Bank of Nova Scotia, Harrowsmith, O.	
		Bank of Montreal. . . Hartland, N.B.	
		Merchants Bank of Canada,	
		Hartney, Man.	
		Union Bank of Canada	"
		Bank of Toronto. Hastings, O.	
		Union Bank of Canada. . .	"
		Union Bank of Canada . Hatton, Sask.	
		Bank of Toronto. . . . Havelock, O.	
		Canadian Bank of Commerce, Hawarden, Sask.	
		Bank of Ottawa. . . Hawkesbury, O.	
		Banque d'Hochelaga	"
		Union Bank of Canada, Hazelton, B.C.	
		Royal Bank of Canada.	
		Heart's Content, Nfld.	
		Banque d'Hochelaga,	
		Hebertville Station, Q.	
		La Banque Nationale.	"

- Bank of British North America,
Hedley, B.C.
Canadian Bank of Commerce,
Hemmingford, Q.
Molsons Bank... ..Hensall, O.
Union Bank of Canada..Hepworth, O.
Canadian Bank of Commerce,
Herbert, Sask.
Union Bank of Canada.. "
Royal Bank of Canada.Herschel, Sask.
Dominion Bank... ..Hespeler, O.
Merchants Bank of Canada, "
Standard Bank of Canada, Hickson, O.
Molsons Bank... ..Highgate, O.
Bank of Montreal, High River, Alta.
Canadian Bank of Commerce, "
Dominion Bank, .. "
Northern Crown Bank .. "
Union Bank of Canada .. "
Bank of Nova Scotia,
Hillsborough, N.B.
Union Bank of Canada, Hillsburg, O.
Standard Bank of Canada, Hillsdale, O.
Royal Bank of Canada..Holden, Alta.
Northern Crown Bank, Holdfast, Sask.
Union Bank of Canada, Holland, Man.
Bank of Montreal... ..Holstein, O.
Canadian Bank of Commerce,
Howick, Q.
Merchants Bank of Canada,
Hughenden, Alta.
Union Bank of Canada, Hughton, Sask.
Bank of Ottawa... ..Hull, Q.
Bank of Montreal... .. "
Banque Provinciale du Canada .. "
La Banque Nationale "
Canadian Bank of Commerce,
Humboldt, Sask.
Merchants Bank of Canada .. "
Merchants Bank of Canada, .. "
Royal Bank of Canada,
Hunter River, P.E.I.
Canadian Bank of Commerce,
Huntingdon, Q.
Merchants Bank of Canada .. "
Dominion Bank... ..Huntsville, O.
Merchants Bank of Canada,
Huxley, Alta.
Home Bank of Canada..Ilderton, O.
Northern Crown Bank, Imperial, Sask.
Bank of Montreal.Indian Head, Sask.
Union Bank of Canada, .. "
Canadian Bank of Commerce,
Ingersoll, O.
Imperial Bank of Canada,
Ingersoll, O.
Royal Bank of Canada .. "
Merchants Bank of Canada, .. "
Northern Crown Bank, Inglewood, O.
Bank of Ottawa... ..Inkerman, O.
- Standard Bank of Canada, Innerkip, O.
Canadian Bank of Commerce,
Innisfall, Alta.
Union Bank of Canada .. "
Canadian Bank of Commerce,
Innisfree, Alta.
Royal Bank of Canada, Inverness, Que.
Royal Bank of Canada, Inverness, N.S.
Northern Crown Bank... ..Inwood, O.
Merchants Bank of Canada,Irma, Alta.
Molsons Bank... ..Iroquois, O.
Union Bank of Canada, Irvine, Alta.
Merchants Bank of Canada,
Islay, Alta.
Union Bank of Canada, Islington, O.
Bank of Nova Scotia,
Jacquet River, N.B.
Union Bank of Canada ..Jansen, Sask.
Bank of Hamilton... ..Jarvis, O.
Bank of Nova ScotiaJasper, O.
Union Bank of Canada .. Jenner, Alta.
Banque d'Hochelaga... ..Joliette, Q.
Canadian Bank of Commerce, .. "
La Banque Nationale "
Royal Bank of Canada... .. "
La Banque Nationale ..Jonquieres, Q.
Sterling Bank of Canada,
Jordan Station, O.
Bank of Hamilton... ..Kamloops, B.C.
Bank of Montreal... .. "
Canadian Bank of Commerce, .. "
Imperial Bank of Canada, .. "
Royal Bank of Canada... .. "
Bank of British North America,
Kamsack, Sask.
Canadian Bank of Commerce, .. "
Bank of British North America,
Kandahar, Sask.
Bank of British North America,
Kaslo, B.C.
Bank of Toronto... .. Keene, Ont.
Union Bank of Canada, Kelfield, Sask.
Bank of British North America,
Kelliher, Sask.
Bank of Montreal... ..Kelowna, B.C.
Canadian Bank of Commerce, .. "
Royal Bank of Canada "
Sterling Bank of Canada,
Kelwood, Man.
Bank of OttawaKemptville, O.
Union Bank of Canada "
Bank of Toronto... .. Kennedy, Sask.
Bank of Ottawa... .. Kenora, O.
Imperial Bank of Canada... .. "
Royal Bank of Canada... .. "
Bank of Nova Scotia,
Kensington, P.E.I.
Bank of Hamilton... ..Kenton, Man.
Bank of Nova Scotia... ..Kentville, N.S.
Royal Bank of Canada.. .. "

Canadian Bank of Commerce,		Bank of Ottawa.	Lachute, Q.
Keremeos, B.C.		Banque Provinciale du Canada, "	
Bank of British North America,		Molsons Bank.	"
Kerrisdale, B.C.		Canadian Bank of Commerce,	
Canadian Bank of Commerce,		Lacolle, Q.	
Kerrobert, Sask.		Merchants Bank of Canada,	
Union Bank of Canada	"	Lacombe, Alta.	
Bank of Toronto.	Kerwood, O.	Royal Bank of Canada,	"
Sterling Bank of Canada.	Kilalloe, O.	Union Bank of Canada,	"
Merchants Bank of Canada.		Royal Bank of Canada, Ladner, B.C.	
Killam, Alta.		Canadian Bank of Commerce,	
Bank of Hamilton, Killarney, Man.		Ladysmith, B.C.	
Union Bank of Canada	"	Royal Bank of Canada.	"
Union Bank of Canada, Kinburn, O.		Bank of Toronto	Lafèche, Sask.
Canadian Bank of Commerce,		Canadian Bank of Commerce,	
Kincaid, Sask.		La Have, N.S.	
Merchants Bank of Canada,		Standard Bank of Canada, Lajord, Sask.	
Kincardine, O		Royal Bank of Canada.	Lakefield, O.
Royal Bank of Canada.	"	Canadian Bank of Commerce,	
Canadian Bank of Commerce.		Lake Saskatoon, Alta.	
Kindersley, Sask.		Royal Bank of Canada, Lambeth, O.	
Union Bank of Canada.	"	La Banque Nationale, La Malbaie, Q.	
Bank of Montreal.	King City, O.	Banque Provinciale du Canada,	
Bank of British North America.		La Malbaie, Q.	
Kingston, O		Molsons Bank.	Lambton Mills, O.
Bank of Montreal	"	Standard Bank of Canada,	
Bank of Toronto.	"	Lamont, Alta.	
Canadian Bank of Commerce, "		Bank of British North America,	
Northern Crown Bank.	"	Lampman, Sask.	
Merchants Bank of Canada, "		Bank of Ottawa.	Lanark, O
Royal Bank of Canada.	"	Merchants' Bank of Canada,	
Standard Bank of Canada	"	Lancaster, O.	
Molsons Bank.	Kingsville, O.	Northern Crown Bank, Lancer, Sask.	
Union Bank of Canada.	"	Union Bank of Canada. Landis, Sask.	
Bank of Ottawa.	Kinistino, Sask.	Union Bank of Canada, Lang, Sask.	
Northern Crown Bank.	Kinley, Sask.	Union Bank of Canada, Langdon, Alta.	
Bank of Toronto.	Kipling, Sask.	Canadian Bank of Commerce,	
Sterling Bank of Canada, Kirkfield, O.		Langham, Sask.	
Bank of Ottawa	Kirkland Lake, O.	Northern Crown Bank	
Merchants Bank of Canada,		Bank of Toronto.	Langenburg, Sask.
Kisbey, Sask.		Canadian Bank of Commerce,	
Bank of Hamilton	Kitchener, O.	Lanigan, Sask.	
Bank of Montreal	"	Union Bank of Canada	"
Bank of Nova Scotia	"	Merchants Bank of Canada,	
Canadian Bank of Commerce, "		Lansdowne, O.	
Dominion Bank.	"	Banque d'Hochelaga	Laprairie, Q.
Merchants Bank of Canada.	"	La Banque Nationale.	"
Molsons Bank	"	Northern Crown Bank,	
Bank of Toronto.	"	La Riviere, Man.	
Union Bank of Canada.	"	Banque d'Hochelaga, L'Assomption, Q.	
Canadian Bank of Commerce,		Canadian Bank of Commerce,	
Kitscoty, Alta.		Lashburn, Sask.	
Canadian Bank of Commerce,		La Banque Nationale.	La Tuque, Q.
Knowlton, Q		Royal Bank of Canada	"
Molsons Bank.	"	Northern Crown Bank, Laura, Sask.	
Home Bank of Canada, Komoka, O.		Banque Provinciale du Canada,	
Standard Bank of Canada,		Laurentides, Q.	
Kronau, Sask.		La Banque Nationale	Lauzon, Q.
Merchants Bank of Canada. Lachine, Q.		Home Bank of Canada,	
Molsons Bank.	"	Lawrence Station, O.	

Royal Bank of Canada.	Canadian Bank of Commerce,
Lawrencetown, N.S.	Lloydminster, Sask.
Union Bank of Canada,	Northern Crown Bank
Lawson, Sask.	Royal Bank of Canada,
Merchants' Bank of Canada.	Lockeport, N.S.
Leamington, O.	Northern Crown Bank, Lockwood, Sask.
Royal Bank of Canada.	Standard Bank of Canada,
Union Bank of Canada.	Lomond, Alta.
Merchants Bank of Canada.	Bank of British North America,
Leduc, Alta.	London, O.
Sterling Bank of Canada, Lefroy, Ont.	Bank of British North America,
Union Bank of Canada, Lemberg, Sask.	Market Sq. (Sub Br.)..London, O.
Canadian Bank of Commerce.	Bank of Montreal.
Lennoxville, Q.	Bank of Nova Scotia
Royal Bank of Canada	Bank of Toronto.
Bank of Ottawa.	Bank of Toronto, Dundas
Lenore, Man.	and Talbot Sts.
Banque Provinciale du Canada,	Bank of Toronto, London
L'Epiphanie, Q.	East.
Bank of Montreal.	Bank of Toronto, London
Lethbridge, Alta.	North.
Bank of Nova Scotia	Bank of Nova Scotia.
Canadian Bank of Commerce, "	Canadian Bank of Commerce, "
Merchants Bank of Canada. "	Dominion Bank.
Molsons Bank.	Dominion Bank.
Royal Bank of Canada	East Rectory St.
Standard Bank of Canada. "	Imperial Bank of Canada.
Union Bank of Canada	Merchants' Bank of Canada. "
Bank of Montreal.	Merchants Bank of Canada,
Levis, Q.	London East
La Banque Nationale.	Home Bank of Canada.
La Caisse d'Economie de No-	Molson Bank.
tre Dame de Quebec	Royal Bank of Canada. "
La Caisse d'Economie de No-	Royal Bank of Canada, "
tre Dame de Quebec, Av. "	Royal Bank of Canada,
Begin	Londonderry, N.S.
Canadian Bank of Commerce,	Bank of British North America,
Lewvan, Sask.	Longueuil, Q.
Northern Crown Bank, Liberty, Sask.	Royal Bank of Canada. "
Bank of British North America,	Banque d'Hochelaga
Lillooet, B.C.	Bank of Hamilton.
Merchants Bank of Canada,	Loreburn, Sask.
Limerick, Alta.	Banque Provinciale du Canada.
Bank of Montreal.	Loretteville, Q.
Lindsay, O.	La Banque Nationale.
Canadian Bank of Commerce. "	Banque d'Hochelaga.
Dominion Bank.	L'Original, O.
Home Bank of Canada.	Canadian Bank of Commerce,
Standard Bank of Canada. "	Lougheed, Alta.
Bank of Nova Scotia	Royal Bank of Canada, Louisburg, N.S.
Linwood, O.	Banque d'Hochelaga.
Royal Bank of Canada, Lion's Head, O.	Louisville, Q.
Royal Bank of Canada, Lipton, Sask.	Union Bank of Canada, Loverna, Sask.
La Banque Nationale.	Merchants Bank of Canada, Lucan, O.
L'Islet, Q.	Standard Bank of Canada "
Bank of Hamilton.	Bank of Hamilton.
Listowel, O.	Lucknow, O.
Imperial Bank of Canada "	Molsons Bank.
Standard Bank of Canada,	Royal Bank of Canada.
Little Britain, O.	Lumsden, Sask.
Merchants Bank of Canada.	Union Bank of Canada "
Little Current, O.	Bank of Montreal.
Bank of Nova Scotia	Lunenburg N.S.
Liverpool, N.S.	
Royal Bank of Canada. "	

Royal Bank of Canada, Lunenburg, N.S.
Union Bank of Canada,

Luseland, Sask.

Home Bank of Canada, Lyleton, Man.
Merchants Bank of Canada, Lyn, O.
Royal Bank of Canada, Lynden, O.
Bank of Toronto, Lyndhurst, O.
Royal Bank of Canada, Mabou, N.S.
Bank of Nova Scotia, McAdam, N.B.
Union Bank of Canada, McCreary, Man.
Weyburn Security Bank,

McTaggart, Sask.

Bank of British North America,
Merchants Bank of Canada,

Macgregor, Man.

Union Bank of Canada, Macklin, Sask.

Bank of British North America,

Macleod, Alta.

Canadian Bank of Commerce, "

Union Bank of Canada, "

Northern Crown Bank, Macoun, Sask.

Union Bank of Canada, Macrorie, Sask.

Canadian Bank of Commerce,

Madoc, O.

Dominion Bank, "

Bank of Montreal, Magog, Q.

Canadian Bank of Commerce, "

Bank of Montreal, Magrath, Alta.

Royal Bank of Canada, "

Bank of Montreal, Mahone Bay, N.S.

Standard Bank of Canada,

Maidstone, Sask.

Bank of Nova Scotia, Maisonneuve, Q.

Merchants Bank of Canada,

Maisonneuve, Q.

Royal Bank of Canada, Maitland, N.S.

Union Bank of Canada, Major, Sask.

Bank of Hamilton, Manitou, Man.

Union Bank of Canada, "

Merchants Bank of Canada,

Manitowaning, O.

Bank of Ottawa, Maniwaki, Q.

Merchants Bank of Canada,

Mannville, Alta.

Northern Crown Bank, Manor, Sask.

Union Bank of Canada, Manotick, O.

Canadian Bank of Commerce,

Mansonville, Q.

Canadian Bank of Commerce,

Manyberries, Alta.

Standard Bank of Canada, Maple, O.

Merchants Bank of Canada,

Maple Creek, Sask.

Union Bank of Canada

Canadian Bank of Commerce,

Marbleton, Q.

Canadian Bank of Commerce,

Marcelin, O.

Northern Crown Bank,

Marengo, Sask.

Banque d'Hochelega, Marieville, Q.

Canadian Bank of Commerce, "

Merchants Bank of Canada,

Markdale, O.

Bank of Nova Scotia, Markham, O.

Standard Bank of Canada, "

Royal Bank of Canada, Markinch, Sask.

Northern Crown Bank, Maple, B.C.

Dominion Bank, Marmora, O.

Bank of Ottawa, Martintown, O.

Union Bank of Canada,

Maryfield, Sask.

Royal Bank of Canada, Massey, O.

Banque Provinciale du Canada,

Masson, Q.

Royal Bank of Canada,

Marystown, Nfld.

La Banque Nationale, Matane, Que.

Molsons Bank, "

Bank of Ottawa, Mattawa, O.

Bank of Hamilton, Mawer, Sask.

Bank of Ottawa, Maxville, O.

Banque d'Hochelega, "

Northern Crown Bank, Maymont, Sask.

Bank of Toronto, Mazenod, Sask.

Merchants Bank of Canada,

Meacham, Sask.

Merchants Bank of Canada,

Meaford, O.

Molsons Bank, "

Bank of Montreal

Medicine Hat, Alta.

Canadian Bank of Commerce, "

Dominion Bank, "

Merchants Bank of Canada, "

Royal Bank of Canada, "

Union Bank of Canada, "

Bank of Montreal, Megantic, Q.

Canadian Bank of Commerce, "

Home Bank of Canada, Melbourne, O.

Union Bank of Canada, "

Northern Crown Bank, Melita, Man.

Union Bank of Canada, "

Bank of Hamilton, Melfort, Sask.

Canadian Bank of Commerce, "

Union Bank of Canada, "

Canadian Bank of Commerce,

Melville, Sask.

Merchants Bank of Canada, "

Bank of Hamilton, Meota, Sask.

Molsons Bank, Merlin, O.

Union Bank of Canada, Merrickville, O.

Bank of Montreal, Merritt, B.C.

Bank of Toronto, "

Bank of Nova Scotia, Merritton, O.

Union Bank of Canada, Metcalfe, O.

Royal Bank of Canada, Meteghan, N.S.

Bank of Toronto, Meyronne, Sask.

Bank of Hamilton.	Miami, Man.	Bank of British North America,	
Weyburn Security Bank, Midale, Sask.		Rosemount.	Montreal, Q.
Canadian Bank of Commerce,		Bank of British North America,	
	Middleton, N.S.	365 St. Catherine W.	"
Royal Bank of Canada,	"	Bank of Montreal, Head Of-	
Bank of British North America,		ice, <i>see adv. p. 137.</i>	"
	Midland, O.	Bank of Montreal, West	
Bank of Hamilton	"	End Br., 430 St. Catherine	
Standard Bank of Canada	"	West	"
Royal Bank of Canada .Milden, Sask.		Bank of Montreal, 261 Peel	"
Merchants Bank of Canada,		Bank of Montreal, Hoche-	
	Mildmay, O	laga Branch	"
Canadian Bank of Commerce,		Bank of Montreal, Maison-	
	Milestone, Sask.	neuve Branch	"
Union Bank of Canada	"	Bank of Montreal, Notre	
Canadian Bank of Commerce,		Dame de Grace ward . .	"
	Milk River, Alta.	Bank of Montreal, 924 Notre	
Bank of Toronto	Millbrook, O.	Dame W., Seigneurs St.	
Sterling Bank of Canada,		Branch.	"
	Mille Roches, O.	Bank of Montreal, St. Anne	
Bank of Hamilton.	Milton, O.	de Bellevue.	"
Bank of Nova Scotia	"	Bank of Montreal, Westm't	"
Bank of Toronto.	"	Bank of Montreal, 934 St.	
Bank of Hamilton.	Milverton, O.	Catherine E., Papineau av.	"
Bank of Nova Scotia.	"	Bank of Montreal, Lachine.	"
Merchants Bank of Canada,		Bank of Montreal, 604 Wel-	
	Mimico, O.	lington, Pt. St. Charles	
Northern Crown Bank .Miniota, Man.		Branch	"
Bank of Hamilton Minnedosa, Man.		Bank of Montreal, St. Law-	
Union Bank of Canada	"	rence Boulevard	"
Bank of Nova Scotia	Minto, N.B.	Bank of Montreal, St Henri	
Union Bank of Canada	"	ward.	"
Canadian Bank of Commerce,		Bank of Montreal, Bleury St.	
	Mission City, B.C.	Bank of Montreal, Windsor	
Bank of Hamilton	Mitchell, O.	St.	"
Merchants Bank of Canada,		Bank of Montreal, McGill	
	Mitchell, O.	St.	"
Merchants Bank of Canada,		Bank of Nova Scotia.	"
	Monarch, Alb.	Bank of Ottawa.	"
Bank of Montreal	Moneton, N.B.	Bank of Ottawa, Fairmount	
Bank of Nova Scotia.	"	Ave.	"
Banque Provinciale du Canada, "		Bank of Toronto, 262 St.	
Canadian Bank of Commerce, "		James	"
Royal Bank of Canada.		Bank of Toronto, 121 Bridge.	
Canadian Bank of Commerce,		Pt. St. Charles	"
	Monitor, Alta	Bank of Toronto, Board of	
Sterling Bank of Canada,		Trade.	"
	Monkton, O.	Bank of Toronto, 516 St.	
Bank of Nova Scotia,		Lawrence Boulevard	"
	Montague, P.E.I.	Bank of Toronto, Atwater	
Canadian Bank of Commerce,		Ave. and St. Antoine St. . .	"
	Montague, P.E.I.	Bank of Toronto, Guy St.	
La Banque Nationale, Mont Joli, Q.		Branch	"
Molson Bank	"	Bank of Toronto, Maison-	
Banque d'Hochelega, Mont Laurier, Q		neuve	"
La Banque Nationale, Montmagny, Q.		Banque d'Hochelega, Head	
Royal Bank of Canada.	"	Office	"
Bank of Toronto. .Montmartre, Sask.			
Bank of British North America,			
Head Office.	Montreal, Q.		

Banque d'Hochelaga, Fullum, cor Ontario.	Montreal, Q.	Banque d'Hochelaga, 289 Blvd. Decarie.	Montreal, Q.
Banque d'Hochelaga, Aylwin, cor Ontario St.	"	Banque d'Hochelaga, 1671 St. Catherine E.	"
Banque d'Hochelaga, Papi- neau cor. Rosemont Blvd. . .	"	Banque d'Hochelaga, 2267 Papineau Av.	"
Banque d'Hochelaga, Ra- chel, cor. Cadieux	"	Banque d'Hochelaga, 1907 St. Lawrence Blvd.	"
Banque d'Hochelaga, St. Via- teur cor Mance	"	Banque d'Hochelaga, 1161 Cote des Neiges rd.	"
Banque d'Hochelaga, Atwater Ave.	"	Banque d'Hochelaga, Cartier- ville Br.	"
Banque d'Hochelaga, East- ern Branch, 711 St. Cath- erine East	"	Banque d'Hochelaga, Hoche- laga Branch.	"
Banque d'Hochelaga, Outre- mont.	"	Banque d'Hochelaga, Pointe aux Trembles.	"
Banque d'Hochelaga, 272 St. Catherine East Br.	"	Banque d'Hochelaga, Pointe Claire.	"
Banque d'Hochelaga, 629 Notre Dame West Br. . .	"	Banque Provinciale du Canada, Head Office . . .	"
Banque d'Hochelaga, St. Henri Branch, 1835 Notre Dame West	"	Banque Provinciale du Cana- da, 346 rue Beaubien. . .	"
Banque d'Hochelaga, St. Denis and Roy.	"	Banque Provinciale du Cana- da, 848 Notre Dame West	"
Banque d'Hochelaga, St. Zotique, Blvd. St. Laurent.	"	Banque Provinciale du Can- ada, 408 Rachel East. . . .	"
Banque d'Hochelaga, 2490 St. Hubert.	"	Banque Provinciale du Can- ada, 103 Roy	"
Banque d'Hochelaga, 316 Centre, Pt. St. Charles . .	"	Banque Provinciale du Cana- da, Eastern Abattoirs, 742 Ontario East.	"
Banque d'Hochelaga, Mt. Royal av., cor. St. Denis.	"	Banque Provinciale du Cau- ada, 493 Belanger.	"
Banque d'Hochelaga, Villeray branch, 3326 St. Hubert . .	"	Banque Provinciale du Can- ada, St. Laurent, Que . .	"
Banque d'Hochelaga, Longue Pointe	"	Banque Provinciale du Can- ada, St. Cunegonde.	"
Banque d'Hochelaga, Maison- neuve Br., 543 Ontario, Mais.	"	Banque Provinciale du Can- ada, Ahuntsic.	"
Banque d'Hochelaga, 737 Mt. Royal av. East.	"	Banque Provinciale du Can- ada, Maisonneuve.	"
Banque d'Hochelaga, 125 Church Ave., Verdun . . .	"	Banque Provinciale du Can- ada, 392 St. Catherine E..	"
Banque d'Hochelaga, Viau- ville.	"	Banque Provincial du Can- ada, 1022 St. Catherine E.	"
Banque d'Hochelaga, Delori- mier Ave. cor Mt. Royal. .	"	Banque Provinciale du Can- ada, Lachine	"
Banque d'Hochelaga, Lachine	"	Banque Provinciale du Can- ada, 2120 Notre Dame W.	"
Banque d'Hochelaga, Ave. Laurier cor de l'Epee. . . .	"	Canadian Bank of Commerce	"
Banque d'Hochelaga, 73 Bou- levard Monk.	"	Canadian Bank of Com- merce, 635 Ontario, Mais..	"
Banque d'Hochelaga, 509 Ontario E.	"	Canadian Bank of Com- merce, Crescent and St. Catherine Sts. br., 660 St. Catherine West	"
Banque d'Hochelaga, 1653 Av. de l'Eglise.	"		

Canadian Bank of Commerce, East end branch, 120 St. Catherine East Montreal, Q.	“	Merchants Bank of Canada, 1255 St. Catherine St. E. Montreal. Q.	“
Canadian Bank of Commerce, Prince Arthur and Park Ave branch, 114 Park Ave	“	Merchants Bank of Canada Laurier Ave. br., 1866 St. Lawrence Blvd	“
Canadian Bank of Commerce, St. Catherine and Metcalfe branch, 460 St. Catherine West	“	Merchants Bank of Canada 2215 St. Denis St.	“
City and District Savings Bank, Head Office, 176 St. James.	“	Merchants Bank of Canada 672 Centre	“
504 St. Catherine St. East.	“	Merchants Bank of Canada, Notre Dame de Grace	“
381 St. Catherine St. West	“	Molsons Bank, Head Office 200 St. James. <i>See advt.</i>	“
1398 Notre Dame St. East	“	<i>inside front cover</i>	“
1745 St. Catherine E.	“	Molsons Bank, Maisonneuve, cor. Ontario and Lasalle Ave.	“
750 Notre Dame St. West.	“	Molsons Bank, Cote des Neiges, 1241 Cote des Neiges, cor Claude Ave.	“
Point St. Charles Branch cor Centre, Conde and Grand Trunk Streets.	“	Molsons Bank, Cote St. Paul Br. 157 Church Ave.	“
946 St. Denis.	“	Molsons Bank, St. Lawrence Blvd. cor Ontario	“
Cor Ontario and Maisonneuve	“	Molsons Bank, Park and Bernard Ave., 205 Bernard Ave. West.	“
952 St. Lawrence.	“	Molsons Bank, Ville St. Pierre 217 St. James cor 4th Ave.	“
1950 St. James	“	Molsons Bank, 525 St. Catherine West	“
1505 St. James	“	Molsons Bank, St. Henri, cor Notre Dame West and St. Remi	“
Cor. St. Denis and Beaubien Streets	“	Molsons Bank, Jacques Cartier Sq and 212 St Paul.	“
Cor Mt. Royal and Christopher Columbus	“	Royal Bank of Canada, Place d'Armes.	“
Dominion Bank, Montreal Branch, 160 St. James.	“	Royal Bank of Canada, 1509 Notre Dame West.	“
Dominion Bank, Guy St. Br. 756 St. Catherine West	“	Royal Bank of Canada, 560 St. Catherine St. East.	“
Dominion Bank, Bleury St. Branch, 301 Bleury.	“	Royal Bank of Canada, 840 St. Catherine West.	“
Dominion Bank (Br.) St. Lawrence Blvd. cor Prince Arthur.	“	Royal Bank of Canada Head Office St. James St. <i>See adv. p. 422.</i>	“
Home Bank of Canada 120 St. James	“	Royal Bank of Canada, Westmount.	“
Home Bank of Canada, 2111 Ontario East	“	Royal Bank of Canada, Beaver Hall.	“
Imperial Bank of Canada, St. James, cor. McGill.	“	Royal Bank of Canada, St. Catherine and Bleury.	“
La Banque Nationale, cor St. James and Place d'Armes hill.	“	Royal Bank of Canada, Sherbrooke and Bleury.	“
Merchants Bank of Canada, Head Office, <i>See adv. p. 542</i>	“	Royal Bank of Canada, Papineau av	“
Merchants Bank of Canada (West end br.), 320 St. Catherine St. W.	“		
Merchants Bank of Canada, 1319 St. Lawrence Blvd	“		

Royal Bank of Canada, Sherbrooke and Addington .	Montreal, Q.	Bank of Hamilton . . .	Morden, Man.
Royal Bank of Canada, Sherbrooke and Draper . . .	"	Union Bank of Canada	"
Royal Bank of Canada, Laurier av.	"	Royal Bank of Canada, Morewood, O.	
Royal Bank of Canada, Stanley St.	"	Royal Bank of Canada,	Morinville, Alta.
Royal Bank of Canada, Van Horne Ave.	"	Merchants Bank of Canada,	
Royal Bank of Canada, Amherst and Ontario	"		Morris, Man.
Royal Bank of Canada, Cote St. Paul.	"	Molsons Bank.	Morrisburg, O.
Royal Bank of Canada, Beau-bien.	"	Bank of Ottawa	"
Royal Bank of Canada, Seigneurs St.	"	Canadian Bank of Commerce,	Morse, Sask.
Royal Bank of Canada, Cote des Neiges	"	Union Bank of Canada. . .	"
Royal Bank of Canada, St. Matthew St.	"	Bank of Hamilton . .	Mortlach, Sask.
Royal Bank of Canada, Amherst and St. Catherine. . .	"	Bank of Toronto.	"
Royal Bank of Canada, St. Viateur St.	"	Dominion Bank. . .	Mount Albert, O.
Royal Bank of Canada, St. Denis and St. Catherine.	"	Union Bank of Canada,	Mount Brydges, O.
Royal Bank of Canada, Bonsecours Market.	"	Bank of Nova Scotia, Mount Dennis, O.	
Royal Bank of Canada, Beaumont St.	"	Bank of Montreal. .	Mount Forest, O.
Royal Bank of Canada, Bonaventure.	"	Royal Bank of Canada,	"
Sterling Bank of Canada, 120 St. James	"	Royal Bank of Canada, Mulgrave, N.S.	
Standard Bank of Canada, 138 St. James	"	Standard Bank of Canada	
Union Bank of Canada, St. Catherine W.	"		Mundare, Alta.
Union Bank of Canada, 232 St. James	"	Royal Bank of Canada, Munson, Alta.	
Royal Bank of Canada Montreal W., Q.		Merchants Bank of Canada,	"
Bank of Hamilton. . .	Moorefield, O.	Canadian Bank of Commerce,	Nakusp, B.C.
Banque d'Hochelega .	Moose Creek, O.	Canadian Bank of Commerce,	Nanaimo, B.C.
Bank of Hamilton .	Moose Jaw, Sask.	Merchants Bank of Canada, "	
Bank of Montreal. . .	"	Royal Bank of Canada	"
Bank of Nova Scotia . .	"	Bank of Hamilton . .	Nanton, Alta.
Canadian Bank of Commerce, "	"	Canadian Bank of Commerce, "	
Dominion Bank.	"	Northern Crown Bank. .	Napanee, O.
Home Bank of Canada,	"	Dominion Bank	"
Imperial Bank of Canada,	"	Merchants Bank of Canada .	"
Merchants Bank of Canada,	"	Merchants Bank of Canada,	Napierville, Q.
Northern Crown Bank, "	"	Merchants Bank of Canada.	
Royal Bank of Canada, "	"		Napinka, Man.
Union Bank of Canada, "	"	Imperial Bank of Canada .	Natal, B.C.
Canadian Bank of Commerce,	Moosomin, Sask.	Canadian Bank of Commerce,	
Union Bank of Canada, "			Neepawa, Man.
		Home Bank of Canada, "	
		Merchants Bank of Canada, "	
		Union Bank of Canada	"
		Bank of Montreal	Nelson, B.C.
		Canadian Bank of Commerce, "	
		Imperial Bank of Canada, "	
		Royal Bank of Canada. .	"
		Standard Bank of Canada	
			Nestleton Station, O.
		Union Bank of Canada,	
			Netherhill, Sask.
		Union Bank of Canada, Neudorf, Sask.	
		La Banque Nationale. . .	Neuveville, Q.
		Bank of Hamilton.	Neustadt, O.
		Royal Bank of Canada .	Neville, Sask.
		Union Bank of Canada, Newboro, O.	
		Standard Bank of Canada, Newburg, O.	

Merchants Bank of Canada,		La Banque Nationale... Nicolet, Q.
Newbury, O.		Union Bank of Canada, Ninga, Man.
La Banque Nationale, New Carlisle, Q.		Merchants Bank of Canada,
Bank of Nova Scotia, ..	"	Nobleford, Alta.
Bank of Nova Scotia, Newcastle, N.B.		Canadian Bank of Commerce,
Royal Bank of Canada,	"	Nokomis, Sask.
Standard Bank of Canada,		Northern Crown Bank,
Newcastle, O.		Banque Provinciale du Canada,
Royal Bank of Canada, ..	"	Norton, N.B.
Union Bank of Canada, New Dale, Man.		Bank of Nova Scotia,
Standard Bank of Canada,		North Augusta, O.
New Dayton, Alta.		Bank of British North America,
Bank of Montreal, New Denver, B.C.		North Battleford, Sask.
Union Bank of Canada,		Bank of Montreal,
New Dundee, O.		Canadian Bank of Commerce, "
Bank of Nova Scotia,		Imperial Bank of Canada,
New Glasgow, N.S.		North Battleford, Sask.
Canadian Bank of Commerce, "		Royal Bank of Canada, ..
Royal Bank of Canada,		Bank of Ottawa, .. North Bay, O.
New Glasgow, N.S.		Imperial Bank of Canada, ..
Bank of Hamilton, New Hamburg, O.		Royal Bank of Canada, ..
Standard Bank of Canada,		Sterling Bank of Canada, ..
New Hamburg, O.		Union Bank of Canada,
Imperial Bank of Canada,		North Gower, O.
New Liskeard, O.		Canadian Bank of Commerce,
Union Bank of Canada, ..		North Hatley, Q.
Bank of Montreal, .. Newmarket, O.		Bank of Nova Scotia,
Bank of Toronto, ..		North Sydney, N.S.
Imperial Bank of Canada, ..		Canadian Bank of Commerce, "
Bank of Nova Scotia,		Royal Bank of Canada, ..
New Richmond, Que.		Bank of British North America,
Standard Bank of Canada,		North Vancouver, B.C.
Newtonville, O.		Bank of Montreal, ..
Bank of Nova Scotia, New Toronto, O.		Royal Bank of Canada, ..
Merchants Bank of Canada, ..		Banque Provinciale, .. Norton, N.B.
Bank of Nova Scotia,		Bank of Nova Scotia, .. Norval, O.
New Waterford, N.S.		Molsons Bank, .. Norwich, O.
Royal Bank of Canada, ..		Royal Bank of Canada, ..
Bank of Montreal,		Union Bank of Canada, .. Norwood, O.
New Westminster, B.C.		Banque Provinciale du Canada,
Bank of Toronto, ..		Notre Dame de Charny, Q.
Canadian Bank of Commerce, ..		Canadian Bank of Commerce,
Merchants Bank of Canada, ..		Nutana, Sask.
Royal Bank of Canada, ..		Merchants Bank of Canada,
Bank of Hamilton, Niagara Falls, O.		Oak Bay, B.C.
Canadian Bank of Commerce, ..		Merchants Bank of Canada,
Imperial Bank of Canada, "		Oak Lake, Man.
Merchants Bank of Canada, "		Bank of British North America,
Royal Bank of Canada, "		Oak River, Man.
Imperial Bank of Canada,		Bank of Hamilton, .. Oakville, O.
Niagara Falls (Upper Bridge), O.		Bank of Toronto, ..
Royal Bank of Canada,		Merchants Bank of Canada, ..
Niagara Falls Centre, O.		Bank of Montreal, .. Oakwood, O.
Bank of Hamilton,		Northern Crown Bank, Odessa, O.
Niagara Falls South, O.		Union Bank of Canada, Ogema, Sask.
Imperial Bank of Canada, ..		Bank of Toronto, .. Oil Springs, O.
Imperial Bank of Canada,		Merchants Bank of Canada,
Niagara-on-the-Lake, O.		Okotoks, Alta.
		Union Bank of Canada, ..

Bank of Ottawa. . . . Parry Sound, O.
 Bank of Toronto."
 Canadian Bank of Commerce. "

Bank of Nova Scotia. . . . Paspebiac, Q.
 Canadian Bank of Commerce.

Peace River Crossing, Alta.
 Royal Bank of Canada. "

Standard Bank of Canada, Pefferlaw, O.
 Bank of Toronto.Pelly, Sask.

Bank of Ottawa.Pembroke, O.
 Merchants Bank of Canada. "

Quebec Bank"
 Royal Bank of Canada. "

Bank of Toronto, Penetanguishene, O.
 Standard Bank of Canada. "

Merchants Bank of Canada, Penhold, Alta.

Union Bank of Canada, Pennant, Sask.
 Union Bank of Canada.Pense, Sask.

Bank of Hamilton.Penticton, B.C.
 Bank of Montreal."

Canadian Bank of Commerce. "
Union Bank of Canada.Perdue, Sask.

Bank of MontrealPerth, O.
 Merchants Bank of Canada. "

Bank of Ottawa"
 Bank of Montreal.Perth, N.B.

Bank of MontrealPeterboro, O.
Bank of Nova Scotia"

Bank of Ottawa."
 Bank of Toronto"

Canadian Bank of Commerce. "
 Dominion Bank"

Royal Bank of Canada."
 Union Bank of Canada."

Bank of Nova Scotia, Petitcodiac, N.B.

Bank of Nova ScotiaPetrolia, O.
 Bank of Toronto."

Canadian Bank of Commerce, Phoenix, B.C.

Union Bank of Canada, Piapot, Sask.
 Standard Bank of Canada, Pickering, O.

Bank of MontrealPictou, O.
Bank of Nova Scotia."

Standard Bank of Canada"
 Union Bank of Canada."

Bank of Nova Scotia.Pictou, N.S.
 Royal Bank of Canada."

Banque Provinciale du Canada, Pierreville, Q.

Molsons Bank"
 Northern Crown Bank, Pierson, Man.

Bank of Hamilton, Pilot Mound, Man.
 Bank of Toronto"

Canadian Bank of Commerce, Pincher Creek, Alta.

Union Bank of Canada. "
 Northern Crown Bank, Pipestone, Man.

Union Bank of Canada, Plantagenet, O.
 Northern Crown BankPlato, Sask.

Standard Bk. of Canada, Plattsville, O.
 Union Bank of Canada, Plenty, Sask.

Banque d'HochelegaPlessisville, Q.
 La Banque Nationale"

Royal Bank of Canada .Plumas, Man.
 Banque d'Hochelega,

Pointe aux Trembles, Q.
 Canadian Bank of Commerce. "

Banque d'Hochelega, Pointe Claire, Q.
 Canadian Bank of Commerce.

Ponoka, Alta.
 Merchants Bank of Canada. "

Northern Crown Bank, Ponteix, Sask.
 Royal Bank of Canada, Pont Rouge, Q.

Bank of Toronto.Porcupine, O.
 Imperial Bank of Canada,

Porcupine South, O.
 Bank of Montreal, Port Alberni, B.C.

Royal Bank of Canada, "
 Bank of HamiltonPort Arthur, O.

Bank of Montreal."
 Bank of Nova Scotia."

Canadian Bank of Commerce. "
 Imperial Bank of Canada, "

Molsons Bank."
 Royal Bank of Canada, "

Sterling Bank of Canada, Port Burwell, O.

Canadian Bank of Commerce, Port Colborne, O.

Imperial Bank of Canada. "
 Bank of Montreal,

Port Coquitlam, B.C.
Sterling Bank of Canada,

Port Credit, O.
Sterling Bank of Canada,

Port Dalhousie, O.
 Bank of Nova Scotia, Port Daniel, Q.

Northern Crown Bank, Pt. Dover, O.
 Bank of Hamilton.Port Elgin, O.

Bank of Nova Scotia, Port Elgin, N.B.
 Bank of Hamilton,

Port Hammond, B.C.
 Bank of Montreal.Port Haney, B.C.

Royal Bank of Canada, Port Hawkesbury, N.S.

Bank of Montreal, Port Hood, N.S.
 Bank of Montreal.Port Hope, O.

Bank of Toronto."
 Royal Bank of Canada. "

Union Bank of Canada, Portland, O.
 Royal Bank of Canada,

Port McNicoll, O.
Royal Bank of Canada,

Port Moody, B.C.
 Canadian Bank of Commerce,

Port Perry, O.
 Standard Bank of Canada, "

Bank of Hamilton Port Rowan, O.	Bank of British North America,
Sterling Bank of Canada,	Quebec, Q.
Port Stanley, O.	
Bank of Ottawa, Portage du Fort, Q.	Bank of British North America,
Bank of Montreal.	St. John's Gate Br. "
Portage La Prairie, Man.	Bank of Montreal. "
Bank of Ottawa. "	Bank of Montreal, Upper
Bank of Toronto. "	Town "
Canadian Bank of Commerce,	Bank of Montreal, St Roch "
Portage La Prairie, Man.	Bank of Nova Scotia "
Imperial Bank of Canada, "	Bank of Nova Scotia, Upper
Merchants Bank of Canada, "	Town "
Canadian Bank of Commerce,	Banque d'Hochelaga, rue St.
Pouce Coupe, B.C.	Jean "
Bank of Ottawa. Powassan, O.	Banque d'Hochelaga, St. Peter
Bank of Toronto. Preeceville, Sask.	St. "
Northern Crown Bank, Prelate, Sask.	Banque d'Hochelaga, St. Roch. "
Merchants Bank of Canada, "	Banque d'Hochelaga, St. Sau-
Merchants Bank of Canada, Prescott, O.	veur. "
Royal Bank of Canada, "	Banque d'Hochelaga, Limoilou "
Bank of Toronto Preston, O.	Banque Nationale, head office "
Imperial Bank of Canada. "	Banque Provincial du Canada. "
Merchants Bank of Canada, "	Banque Provincial du Canada,
Bank of Montreal. Prince Albert, Sask.	St Sauveur. "
Bank of Nova Scotia "	Canadian Bank of Commerce, "
Bank of Ottawa "	Canadian Bank of Commerce,
Canadian Bank of Commerce,	Upper Town "
Prince Albert, Sask.	Imperial Bank of Canada. "
Banque d'Hochelaga, "	La Banque Nationale, Inspec-
Imperial Bank of Canada, "	tor's Dept. "
Royal Bank of Canada. "	La Banque Nationale, Palace
Union Bank of Canada. "	Br. St. Paul "
Bank of British North America,	La Banque Nationale, Rue St.
Prince George, B.C.	Jean. "
Royal Bank of Canada, "	La Banque Nationale, Belve-
Bank of British North America,	dere "
Prince Rupert, B.C.	La Banque Nationale, St. Malo "
Bank of Montreal "	La Banque Nationale, St.
Canadian Bank of Commerce, "	Roch "
Royal Bank of Canada, "	La Banque Nationale, St. Sau-
Union Bank of Canada, "	veur. "
Bank of Hamilton. Princeton, O.	La Caisse d'Economie de Notre
Bank of Montreal. Princeton, B.C.	Dame de Quebec, Head Office,
Canadian Bank of Commerce,	21 St. John St. "
Princeton, B.C.	La Caisse d'Economie de N.-D.
Royal Bank of Canada. Princeville, Q.	de Quebec, St. Joseph St.
Canadian Bank of Commerce, "	Branch. "
Provost, Alta.	La Caisse d'Economie de N.D.
Merchants Bank of Canada,	de Quebec, cor St. John and
Prussia, Sask.	Claire Fontaine Sts. "
Standard Bank of Canada. "	La Caisse d'Economie de N.D.
Union Bank of Canada. "	de Quebec, Cor. St. Peter St.
Bank of British North America,	and Mountain Hill. "
Punnichy, Sask.	La Caisse d'Economie de Notre
Northern Crown Bank.	Dame de Quebec, 103 Com-
Qu'Appelle, Sask.	mmercial St. Branch "
Union Bank of Canada. "	La Caisse d'Economie de Notre
	Dame de Quebec, St.
	Valler St. "

La Caisse d'Economie de N. D. de Quebec, Limoilou.	Quebec, Q.
La Caisse d'Economie de N.D. de Quebec, 20 Eden.	"
Merchants Bank of Canada, St. Peter St.	"
Merchants Bank of Canada, St Sauveur.	"
Molsons Bank.	"
Molsons Bank, Upper Town Br.	"
Royal Bank of Canada, St. Roch	"
Royal Bank of Canada, St. John St.	"
Royal Bank of Canada, Upper Town.	"
Royal Bank of Canada, St. Sau- veur.	"
Royal Bank of Canada.	"
Royal Bank of Canada, Limoilou	"
Union Bank of Canada, Head Office.	"
Union Bank of Canada, Place d'Armes.	"
Bank of British North America.	Quesnel, B.C.
Northern Crown Bank	"
Northern Crown Bank, Quill Lake, Sask.	"
Merchants Bank of Canada, Quyon, Q. Canadian Bank of Commerce,	Radisson, Sask.
Canadian Bank of Commerce, Radville, Sask.	"
Weyburn Security Bank	"
Canadian Bank of Commerce, Rainy River, O	"
Union Bank of Canada, Rapid City, Man.	"
Northern Crown Bank, Rathwell, Man. Royal Bank of Canada, Rawdon, Q. Bank of Montreal	Raymond, Alta.
Imperial Bank of Canada, Redcliff, Alta. Royal Bank of Canada	"
Bank of Montreal.	Red Deer, Alta.
Canadian Bank of Commerce.	"
Imperial Bank of Canada.	"
Merchants Bank of Canada.	"
Northern Crown Bank.	"
Standard Bank of Canada, Rednersville, O.	"
Bank of Hamilton	Redvers, Sask.
Bank of British North America, Regina, Sask.	"
Bank of Hamilton.	"
Bank of Montreal.	"
Bank of Nova Scotia.	"
Bank of Ottawa.	"
Canadian Bank of Commerce.	Regina, Sask.
Dominion Bank.	"
Imperial Bank of Canada	"
Merchants Bank of Canada.	"
Northern Crown Bank	"
Royal Bank of Canada	"
Royal Bank of Canada, North End.	"
Sterling Bank of Canada.	"
Standard Bank of Canada.	"
Union Bank of Canada	"
Bank of Ottawa.	Renfrew, O.
Bank of Montreal.	"
Merchants Bank of Canada	"
Bank of British North America, Reston, Man.	"
Canadian Bank of Commerce, Retlaw, Alta.	"
Canadian Bank of Commerce, Revelstoke, B.C.	"
Imperial Bank of Canada,	"
Molsons Bank.	"
Royal Bank of Canada, Rexton, N.B Bank of British North America, Rhein, Sask.	"
Standard Bank of Canada, Riceton, Sask.	"
Bank of Toronto,	Richdale, Alta.
Royal Bank of Canada, Richibucto, N.B.	"
Bank of Ottawa.	Richmond, O.
Canadian Bank of Commerce, Richmond, Q.	"
Molsons Bank.	"
Standard Bank of Canada, Richmond Hill, O.	"
Molsons Bank.	Ridgetown, O.
Royal Bank of Canada.	"
Imperial Bank of Canada, Ridgeway, O. Merchants Bank of Canada,	"
Merchants Bank of Canada, Rigaud, Q. Canadian Bank of Commerce,	Rimbey, Alta.
Canadian Bank of Commerce, Rimouski, Q.	"
La Banque Nationale	"
Royal Bank of Canada	Ripley, O.
Bank of Nova Scotia, River Hebert, N.S.	"
Canadian Bank of Commerce, Riverhurst, Sask.	"
Bank of Montreal	Riverport, N.S.
Canadian Bank of Commerce, Rivers, Man.	"
Bank of Nova Scotia, Riverside, N.B. La Banque Nationale, Riviere du Loup St'n., Q.	"

Banque d'Hochelaga. Robertsonville, Q.	Bank of Hamilton, Saskatoon, Sask.
La Banque Nationale. Roberval, Q.	Bank of Montreal "
Molson Bank. "	Bank of Nova Scotia "
Union Bank of Canada, Roblin, Man.	Bank of Nova Scotia, West
Union Bank of Canada, Robsart, Sask.	side branch. "
Union Bank of Canada,	Canadian Bank of Commerce, "
Rocanville, Sask.	Dominion Bank. "
Northern Crown Bank,	Imperial Bank of Canada , "
Rockhaven, Sask.	Merchants Bank of Canada , "
Canadian Bank of Commerce,	Northern Crown Bank "
Rock Island, Q.	Royal Bank of Canada , "
Royal Bank of Canada "	Royal Bank of Can-
Bank of Ottawa , Rockland, O.	ada, Nutana. "
Banque Provinciale du Canada, "	Union Bank of Canada , "
Royal Bank of Canada, Rockwood, O.	Bank of Montreal, Sault Ste. Marie , O.
Canadian Bank of Commerce,	Canadian Bank of Commerce, "
Rockyford, Alta.	Imperial Bank of Canada. "
Royal Bank of Canada. Rodney, O.	Imperial Bank of Canada,
Bank of Hamilton. Roland, Man.	Gore and Queen Sts. "
Union Bank of Canada "	Royal Bank of Canada. "
Union Bank of Canada, Roseneath, O.	Bank of Montreal Sawyerville, Q.
Royal Bank of Canada,	Union Bank of Canada, Sceptre, Sask.
Rosetown, Sask.	Royal Bank of Canada. Schomberg, O.
Union Bank of Canada. "	Bank of Montreal Schreiber, O.
Bank of Toronto Rossburn, Man.	Standard Bank of Canada,
Bank of Montreal Rossland, B.C.	Schumacher, O.
Bank of B. N. A. "	Northern Crown Bank, Scotland, O.
Royal Bank of Canada. "	Can. Bank of Com., Scotstown, Q.
Bank of B. N. A. Rosthern, Sask.	Royal Bank of Canada. Scott, Sask.
Imperial Bank of Canada,	Union Bank of Canada. "
Bank of Hamilton, Rouleau, Sask.	Can. Bank of Com. Seaforth, O.
Bank of Ottawa. "	Dominion Bank. "
Canadian Bank of Commerce,	Sterling Bank of Canada,
Roxton Falls, Q.	Sebringville, O.
Northern Crown Bank,	Merchants Bank of Canada,
Rush Lake, Sask.	Sedgewick, Alta.
Merchants Bank of Canada.	Northern Crown Bank, Sedley, Sask.
Russell, Man.	Northern Crown Bank, Seeleys Bay, O.
Union Bank of Canada "	Bank of Hamilton. Selkirk, Man.
Bank of Ottawa Russell, O.	Bank of British North America. "
Banque d'Hochelaga "	Dominion Bank "
Royal Bank of Canada. Ryley, Alta.	Bank of British North America ,
Bank of Nova Scotia. Sackville, N.B.	Semans, Sask.
Royal Bank of Canada "	Dominion Bank, Seven Persons, Alta.
Bank of Hamilton, Salmon Arm, B.C.	Merchants Bank of Canada,
Canadian Bank of Commerce, "	Senlac, Sask.
Bank of British North America,	Standard Bank of Canada ,
Saltcoats, Sask.	Shakespeare, O.
Northern Crown Bank. "	Standard Bank of Canada ,
Home Bank of Canada, Sandwich, O.	Shannonville, O.
Bank of Montreal Sarnia, O.	Canadian Bank of Commerce,
Bank of Toronto "	Shaunavon, Sask.
Canadian Bank of Commerce, "	Merchants Bank of Canada, "
Merchants Bank of Canada. "	Union Bank of Canada, "
Royal Bank of Canada. "	Banque d'Hochelaga,
Bank of British North America,	Shawinigan Falls, Q.
Saskatoon, Sask.	La Banque Nationale, "
	Royal Bank of Canada, "

Merchants Bank of Canada,

Shawville, Q.

Bank of Montreal.Shediac, N.B.

Sterling Bank of Canada, Shedden, O.

Northern Crown Bank, Sheho, Sask.

Canadian Bank of Commerce,

Shelburne, N.S.

Bank of Toronto.Shelburne, O.

Union Bank of Canada"

Canadian Bank of Commerce.

Shellbrook, Sask

Bank of MontrealSherbrooke, Q.

Banque d'Hochelaga"

La Banque Nationale"

Canadian Bank of Commerce. "

Canadian Bank of Commerce, "

Upper Town."

Canadian Bank of Commerce,

Wellington St.Sherbrooke, Q.

Merchants Bank of Canada. "

Royal Bank of Canada."

Royal Bank of Canada, "

Upper Town"

Royal Bank of Canada.

Sherbrooke, N.S.

Union Bank of Canada,

Shoal Lake, Man.

Royal Bank of Canada,

Shubenacadie, N.S.

Bank of Toronto.Sibbald, Alta.

Merchants Bank of Canada.

Sidney, B.C.

Bank of Hamilton.Simcoe, O.

Canadian Bank of Commerce. "

Molsons Bank"

Union Bank of Canada, Simpson, Sask.

Home Bank of Canada,

Sintaluta, Sask.

Union Bank of Canada "

Union Bank of Canada, Smithers, B.C.

Bank of Ottawa.Smith's Falls, O.

Canadian Bank of Commerce, "

Molsons Bank."

Union Bank of Canada."

Union Bank of Canada, Smithville, O.

Sterling Bank of Canada.Sombra, O.

Northern Crown Bank, Somerset, Man.

Union Bank of Canada, "

Bank of Hamilton, Snowflake, Man.

Banque d'Hochelaga.Sorel, Q.

La Banque Nationale"

Molsons Bank"

Merchants Bank of Canada,

Souris, Man.

Union Bank of Canada "

Canadian Bank of Commerce,

Souris, P.E.I.

Bank of Hamilton, Southampton, O.

Banque d'Hochelaga,

South Durham, Q.

Union Bank of Canada, Southey, Sask.

Canadian Bank of Commerce.

South Hill, B.C.

Imperial Bank of Canada,

South Porcupine, O.

Royal Bank of Canada, South River, O.

Imperial Bank of Canada,

South Woodslee, O.

Royal Bank of Canada.

Sovereign, Sask.

Imperial Bank of Canada, Sparta, O.

Royal Bank of Canada, Spencerville, O.

Northern Crown Bank, Sperling, Man.

Union Bank of Canada.

Spirit River, Alta.

Royal Bank of Canada, Springfield, O.

Canadian Bank of Commerce.

Springhill, N.S.

Royal Bank of Canada "

Imperial Bank of Canada,

Springwater, Sask.

Merchants Bank of Canada,

Ste Agathe des Monts, Que.

La Banque Nationale.St. Aime, Q.

Banque d'Hochelaga. St. Albert, Alta.

Banque Provinciale du Canada.

St. Andre Avellin, Q.

Bank of Nova Scotia St. Andrews, N.B.

La Banque Nationale,

St. Anne de Beaupre, Q.

La Banque Nationale.

Ste. Anne de la Pocatiere, Q.

Banque Provinciale du Canada,

St. Anselme, Q.

Banque Provinciale du Canada.

St. Barnabe, Q.

Banque Provinciale du Canada,

St. Barthelemi, Q.

Banque d'Hochelaga

St. Boniface, Man.

Northern Crown Bank, "

Banque d'Hochelaga.

St. Camille de Bellechasse

La Banque Nationale. St. Casimir, Q.

Bank of British North America,

St. Catharines, O.

Bank of Nova Scotia."

Bank of Montreal"**Bank of Toronto**"**Canadian Bank of Com-****merce.**"

Imperial Bank of Canada "

Imperial Bank of Canada,

East End."

Imperial Bank of Canada,

Market Br."

Royal Bank of Canada,	Royal Bank of Canada,
St. Catharines, O.	St. Jean Chrysostome.
Sterling Bank of Canada, "	Banque Provinciale du Canada,
Union Bank of Canada, "	St. Jean Port Joli, Q.
Molsons Bank... St. Cesaire, Q.	Banque d'Hochelega... St. Jerome, Q.
La Banque Nationale,	Merchants Bank of Canada, "
St. Charles (Bellechasse) Q.	Banque Provinciale du Canada,
Canadian Bank of Commerce,	St. Joachim, O.
St. Chrysostome, Q.	Bank of British North America,
Banque d'Hochelega... St. Claire, Q.	Union St. St. John, N.B.
Standard Bank of Canada,	Bank of British North America,
St. Clements, O.	St. John, N.B.
Banque Provinciale du Canada,	Bk. of British North Am-
St. Clet, Q.	erica, Haymarket sq. "
Banque Provinciale, St. Croix, Q.	Bank of Montreal. "
Imperial Bank of Canada,	Bank of Nova Scotia,
St. David's, O.	Prince Wm. St. "
Banque Provinciale du Canada,	Bank of Nova Scotia
St. Denis, River Richelieu	Haymarket sq. "
Banque d'Hochelega,	Bank of Nova Scotia
St. Ephrem de Tring	North End Br. "
Merchants Bank of Canada,	Bank of Nova Scotia,
St. Eugene, O.	West St. John "
Banque Provinciale du Canada,	Bank of Nova Scotia
St. Eustache, Q.	Mill St. and Paradise
La Banque Nationale,	Row. "
St. Evariste Station, Que.	Bank of Nova Scotia,
La Banque Nationale . St. Felicien, Q.	Charlotte St. "
Canadian Bank of Commerce,	Banque Provinciale du
St. Felix de Valois, Q.	Canada. "
Canadian Bank of Commerce,	Canadian Bank of Commerce, "
St. Ferdinand d'Halifax, Q.	Merchants Bank of Canada, "
La Banque Nationale,	Royal Bank of Canada, "
Banque Provinciale du Canada,	Royal Bank of Canada,
St. Flavien, Q.	North End. "
Banque d'Hochelega,	Union Bank of Canada "
St. Gabriel de Brandon, O.	Bank of Montreal... St. John's Nfld.
Canadian Bank of Commerce,	Bank of Nova Scotia "
St. Gabriel de Brandon, Q.	Bank of Nova Scotia, East
Banque d'Hochelega,	End "
St. Genevieve de Batiscan, Q.	Canadian Bank of Commerce, "
Banque d'Hochelega,	Newfoundland Savings Bank, "
St. Genevieve de Pierrefonds	Royal Bank of Canada "
Merchants Bank of Canada,	Royal Bank of Canada,
St. George, O	West End "
Canadian Bank of Commerce,	Canadian Bank of Commerce,
St. George Beauce, Q.	St. Johns, Q.
Royal Bank of Canada, "	Merchants Bank of Canada, "
Bank of Nova Scotia, St. George, N.B.	Royal Bank of Canada. "
Banque Provinciale du Canada,	Canadian Bank of Commerce,
St. Guillaume d'Upton, Q.	St. Joseph Beauce, Q.
Banque d'Hochelega, St. Hyacinthe, Q.	La Banque Nationale, "
Bank of Montreal "	Merchants Bank of Canada,
Canadian Bank of Commerce, "	St. Jovite, Q.
La Banque Nationale. "	Banque d'Hochelega,
Bank of Nova Scotia, St. Jacobs, Ont.	St. Justine de Newton, Q.
Banque d'Hochelega,	Bank of Toronto . . . St. Lambert, Q.
St. Jacques L'Achigan, Q.	Banque d'Hochelega, "
La Banque Nationale. . . St. Jean, Q.	

Royal Bank of Canada.	St. Lambert, Q.	Imperial Bank of Canada	
Banque Provinciale . . .	St. Laurent, Q.	East End Br.	St. Thomas, O.
Banque d'Hochelega . . .	"	Imperial Bank of Canada,	
Royal Bank of Canada,		West End Br.	"
St. Leonards, N.B.		Merchants Bank of Canada,	"
Banque Provinciale du Canada,		Molsons Bank	"
St. Malachie, Q.		Molsons Bank, East End	
Banque d'Hochelega,		Branch.	"
Ste. Marie de la Beauce, Q.		Royal Bank of Canada . . .	"
La Banque Nationale,		La Banque Nationale . . .	St. Tite, Q.
Ste. Marie de la Beauce, Q.		Banque Provinciale du Canada,	
Banque d'Hochelega . . .	St. Martine, Q.	Ste. Ursule, Q.	
Bank of Montreal . . .	St. Mary's, O.	Banque Provinciale du Canada,	
Molsons Bank	"	St. Valier, Q.	
Royal Bank of Canada,	"	Banque d'Hochelega,	
La Banque Nationale,		St. Vincent de Paul	
St. Michel, Bellechasse, Q.		Canadian Bank of Commerce,	
Molsons Bank	St. Ours, Q.	Stanbridge East, Q.	
La Banque Nationale.	St. Pacome, Q.	Union Bank of Canada. Standard, Alta.	
La Banque Nationale, St. Pascale, Q.		Merchants Bank of Canada,	
Banque Provinciale du Canada,		Starbuck, Man.	
St. Pascale, Q.		Bank of Ottawa . . .	Star City, Sask.
Banque d'Hochelega,		Bank of Hamilton . . .	Stavely, Alta.
St. Paul de Metis, Alta.		Canadian Bank of Commerce,	"
Royal Bank of Canada, St. Peters, N.S.		Bank of Toronto	Stayner, O.
Banque d'Hochelega	St. Pie, Q.	Royal Bank of Canada, Steelton, O.	
Banque d'Hochelega, St. Pierre, Man.		Bank of Nova Scotia, Stellarton, N.S.	
Union Bank of Canada,		Bank of Toronto	Stenen, Sask.
St. Polycarpe, Q.		Merchants Bank of Canada,	
Banque Provinciale du Canada,		Stettler, Alta.	
St. Raphael, Q.		Royal Bank of Canada. . .	"
La Banque Nationale, St. Raymond, Q.		Sterling Bank of Canada,	
Banque d'Hochelega	St. Remi, Q.	Stevensville, O.	
La Banque Nationale,		Northern Crown Bank, Steveston, B.C.	
St. Romuald, Q.		Royal Bank of Canada, Stewiacke, N.S.	
Royal Bank of Canada . . .	"	Bank of Montreal.	Stirling, O.
Banque Provinciale du Canada,		Union Bank of Canada. . .	"
St. Rose, Q.		Union Bank of Canada, Stittsville, O.	
Northern Crown Bank,		Northern Crown Bank, Stonewall, Man.	
St. Rose du Lac, Man.		Bank of Hamilton	"
La Banque Nationale, St. Sauveur, Q.		Bank of Hamilton, Stony Beach, Sask.	
Merchants Bank of Canada, "		Royal Bank of Canada,	
Banque Provinciale du Canada,		Stony Creek, O.	
St. Scholastique, Q.		Canadian Bank of Commerce,	
Bank of British North America,		Stony Plain, Alta.	
St. Stephen, N.B.		Banque Provinciale du Canada,	
Bank of Nova Scotia. . .	"	Stony Point, O.	
Royal Bank of Canada . . .	"	Northern Crown Bank,	
Banque Provinciale du Canada,		Stornoway, Sask.	
St. Sylvestre, Q.		Bank of Nova Scotia, Stouffville, O.	
Banque d'Hochelega . . .	St. Thecle, Q.	Standard Bank of Canada,	"
Molsons Bank	St. Therese, Q.	Bank of Ottawa . . .	Stoughton, Sask.
La Banque Nationale	"	Royal Bank of Canada,	
Canadian Bank of Commerce,		Strassburg, Sask.	
St. Thomas, Q.		Union Bank of Canada,	"
Dominion Bank.	"	Bank of Montreal	Stratford, O.
Home Bank of Canada . . .	"	Bank of Nova Scotia . . .	"

Bank of Toronto.	Stratford, O.	Bank of Hamilton.	Taber, Alta.
Canadian Bank of Commerce, "	"	Canadian Bank of Commerce, "	"
Merchants Bank of Canada, "	"	Royal Bank of Canada.	"
Royal Bank of Canada.	"	Sterling Bank of Canada,	
Union Bank of Canada,			Tamworth, O.
	Strathelair, Man.	Home Bank of Canada,	
Imperial Bank of Canada,			Tantallon, Sask.
	Strathcona, Alta.	Merchants Bank of Canada,	Tara, O.
Union Bank of Canada,		Bank of Nova Scotia,	
	Strathmore, Alta.		Tatamagouche, N.S.
Canadian Bank of Commerce,		Standard Bank of Canada,	Tavistock, O.
	Strathroy, O.	Home Bank of Canada .	Tecumseh, O.
Standard Bank of Canada	"	Bank of Hamilton.	Teeswater, O.
Royal Bank of Canada.	"	Molsons Bank	"
Bank of Nova Scotia .	Streetsville, O.	Banque Provinciale du Canada,	
Merchants Bank of Canada,			Terrebonne, Q.
	Strome, Alta.	Union Bank of Canada.	Tessier, Sask.
Banque d'Hochelaga.	Sturgeon Falls, O.	Banque d'Hochelaga,	Tetraultville, Q.
Royal Bank of Canada,	"	Royal Bank of Canada,	
Bank of Ottawa.	Sudbury, O.		Thamesford, O.
Bank of Montreal	"	Merchants Bank of Canada,	
Bank of Toronto	"		Thamesville, O.
Canadian Bank of Commerce, "	"	Canadian Bank of Commerce,	
Sterling Bank of Canada.	"		Theford, O.
Royal Bank of Canada	"	Union Bank of Canada.	Theodore, Sask.
Bank of Montreal. .	Summerland, B.C.	Canadian Bank of Commerce	
Bank of Nova Scotia,			The Pas, Man.
	Summerside, P.E.I.	Union Bank of Canada	"
Canadian Bank of Commerce, "	"	Imperial Bank of Canada,	
Royal Bank of Canada,	"		Thessalon, Ont.
Home Bank of Canada, Sunderland, O.		Bank of Montreal, Thetford Mines, Q.	
Standard Bank of Canada, "		Canadian Bank of Commerce, "	
Bank of Nova Scotia. . .	Sussex, N.B.	La Banque Nationale,	"
Royal Bank of Canada	"	Royal Bank of Canada,	"
Canadian Bank of Commerce,		Bank of Toronto.	Thornbury, O.
	Sutton, Q.	Home Bank of Canada,	Thorndale, O.
Molsons Bank	"	Sterling Bank of Canada,	Thornhill, O.
Bank of Nova Scotia .	Sutton West, O.	Union Bank of Canada,	
Union Bank of Canada.	Swalwell, Alta.		Thornton, O.
Bank of Hamilton . .	Swan Lake, Man.	Canadian Bank of Commerce,	
Bank of Toronto, Swan River, Man.			Thorold, O.
Canadian Bank of Commerce,		Imperial Bank of Canada.	"
	Swan River, Man.	Merchants Bank of Canada	"
Bank of Ottawa, Swift Current, Sask		Royal Bank of Canada.	"
Bank of Montreal.	"	Union Bank of Canada,	
Canadian Bank of			Three Hills, Alta.
Commerce.	"	Bank of Montreal. .	Three Rivers, Q.
Northern Crown Bank,	"	Banque d'Hochelaga	"
Royal Bank of Canada,	"	Banque d'Hochelaga,	
Union Bank of Canada,	"		Notre Dame.
Union Bank of Canada, Sydenham, O.		Banque Provinciale du Canada, "	
Bank of Montreal	Sydney, N.S.	Canadian Bank of Commerce, "	
Canadian Bank of Commerce, "	"	La Banque Nationale.	"
Royal Bank of Canada.	"	Molsons Bank.	"
Bank of Nova Scotia.	"	Royal Bank of Canada,	"
Bank of Nova Scotia,		Banque Provinciale du Canada,	
	Sydney Mines, N.S.		Thurso, Q.
Merchants Bank of Canada, "	"	Royal Bank of Canada, Tignish, P.E.I.	
Royal Bank of Canada, "	"		

Banque Provinciale du Canada, Tignish, P.E.I.	Bank of Nova Scotia, Danforth and Pape av.	Toronto, O.
Banque Provinciale du Canada, Tilbury, O.	Bank of Nova Scotia, Dundas and Arthur Sts.	"
Merchants Bank of Canada " "	Bank of Nova Scotia, Main and Gerard Sts.	"
Canadian Bank of Commerce, Tilsonburg, O.	Bank of Nova Scotia, Queen and Church	"
Royal Bank of Canada " "	Bank of Nova Scotia, Queen and Lee.	"
Standard Bank of Canada, " "	Bank of Nova Scotia, Queen and McCaul.	"
Imperial Bank of Canada, Timmins, O.	Bank of Nova Scotia, Bloor and Spadina.	"
Bank of Ottawa.	Bank of Nova Scotia, King and George Sts.	"
Tisdale, Sask.	Bank of Nova Scotia, Queen and River "Don Br."	"
Standard Bank of Canada, Tiverton, Ont.	Bank of Ottawa, Danforth Ave. " "	
Merchants Bank of Canada, Tofield, Alta.	Bank of Ottawa, Broadview Ave.	"
Union Bank of Canada, Togo, Sask.	Bank of Ottawa, Pape Ave. and Queen St.	"
Union Bank of Canada, Tompkins, Sask.	Bank of Toronto, Head Office " "	
Bank of British North America, Toronto, O.	Bank of Toronto, King and Bathurst Sts. " "	
Bank of British North America, Bloor and Lansdowne " "	Bank of Toronto, Elm St. " "	
Bank of British North America, King and Dufferin Sts. " "	Bank of Toronto, 205 Yonge St. " "	
Bank of British North America, Queen and Beech av. " "	Bank of Toronto, Dundas St.	"
Bank of British North America, Royce Ave.	Bank of Toronto, Roncesvalles Ave.	"
Bank of Hamilton " "	Bank of Toronto, Queen St. East cor Logan av.	"
Bank of Hamilton, Queen and Spadina	Bank of Toronto, Queen St. West and Spadina Ave.	"
Bank of Hamilton, College St. Branch.	Bank of Toronto, Queen East and Parliament Sts.	"
Bank of Hamilton, cor Yonge and Gould.	Bank of Toronto, Dundas and Keele Sts.	"
Bank of Montreal	Bank of Toronto, Wellington St. E. cor Church St.	"
Bank of Montreal, Yonge St. " "	Canadian Bank of Commerce, Head Office	"
Bank of Montreal, Queen and Portland.	Canadian Bank of Commerce, College and Dovercourt	"
Bank of Montreal, Bathurst St. " "	Canadian Bank of Commerce, Earlscourt branch	"
Bank of Montreal, Parkdale " "	Canadian Bank of Commerce, Parliament St Branch.	"
Bank of Montreal, Dundas St. " "	Canadian Bank of Commerce, King St. E., Market Branch " "	
Bank of Montreal, Carlton St. " "	Canadian Bank of Commerce, Queen corner Bathurst.	"
Bank of Montreal, Queen St. East	Canadian Bank of Commerce, Bloor and Dufferin.	"
Bank of Nova Scotia, Queen and Lansdowne	Canadian Bank of Commerce, Parkdale Br.	"
Bank of Nova Scotia, King St. " "		
Bank of Nova Scotia, Bloor and St. Clarens		
Bank of Nova Scotia, St. Patrick and Spadina		
Bank of Nova Scotia, Dundas St. Branch		
Bank of Nova Scotia, Broad- view and Danforth.		
Bank of Nova Scotia, College and Bathurst Sts.		

Canadian Bank of Commerce, Bloor and Yonge St.	Toronto, O.	Home Bank of Canada, Bloor and Bathurst Sts	Toronto, O.
Canadian Bank of Commerce, Yonge North of Queen.	"	Home Bank of Canada, Yonge St., Subway.	"
Canadian Bank of Commerce West Toronto.	"	Home Bank of Canada, Queen and Bathurst Sts.	"
Canadian Bank of Commerce, Yonge and College Sts.	"	Home Bank of Canada, Queen and Ontario.	"
Canadian Bank of Commerce, Gerrard and Pape.	"	Home Bank of Canada, Broad- view Ave.	"
Canadian Bank of Commerce, Queen St. E.	"	Home Bank of Canada, 1686 Dundas.	"
Canadian Bank of Commerce Spadina and College.	"	Imperial Bank of Canada, Yonge and Ann Ste.	"
Canadian Bank of Commerce Danforth and Broadview	"	Imperial Bank of Canada, Bloor and Lansdowne Br.	"
Canadian Bank of Commerce, Bloor and Lippincott.	"	Imperial Bank of Canada, King and Sherbourne.	"
Canadian Bank of Commerce, Balmy Beach	"	Imperial Bank of Canada, Wellington St. and Leader lane Head Office	"
Dominion Bank, Head Office	"	Imperial Bank of Canada, Yonge and Queen Sts	"
Dominion Bank, City Hall Br.	"	Imperial Bank of Canada, Yonge and Bloor Sts.	"
Dominion Bank, cor Bloor and Bathurst.	"	Imperial Bank of Canada, Bathurst and Dupont	"
Dominion Bank, Deer Park	"	Imperial Bank of Canada, West Market, Front Streets.	"
Dominion Bank, Queen St., W.	"	Imperial Bank of Canada, King and Spadina Branch.	"
Dominion Bank, Dupont and Christie.	"	Imperial Bank of Canada, Adelaide and Victoria Sts.	"
Dominion Bank, Eglinton av.	"	Imperial Bank of Canada, Queen and Palmerston av.	"
Dominion Bank, McCall and St Patrick	"	Imperial Bank of Canada, King and York Sts	"
Dominion Bank, Yonge and Bloor	"	Imperial Bank of Canada, Queen St. and Roncesvalles Ave	"
Dominion Bank, West Toronto	"	Imperial Bank of Canada, Queen and Kingston Rd.	"
Dominion Bank, Yonge and Cottingham Sts	"	Imperial Bank of Canada, Dundas and Bloor Sts.	"
Dominion Bank, Avenue Rd.	"	Imperial Bank of Canada, Davisville St.	"
Dominion Bank, Dovercourt Rd.	"	Imperial Bank of Canada, Wel- lesley and Sherbourne Sts.	"
Dominion Bank, Cor. Sher- bourne and Queen St.	"	Merchants Bank of Canada, Dupont and Christie Sts	"
Dominion Bank, Dundas St.	"	Merchants Bank of Canada, Wellington St.	"
Dominion Bank, Market Br.	"	Merchants Bank of Canada, Parliament St.	"
Dominion Bank, Queen and Victoria Sts.	"	Merchants Bank of Canada, Dundas St.	"
Dominion Bank, Earls court.	"	Molsons Bank	"
Dominion Bank, Rosedale Br.	"		
Dominion Bank, Spadina.	"		
Dominion Bank, Broadview av.	"		
Dominion Bank, Lee Ave.	"		
Dominion Bank, Wychwood Branch, Bathurst St.	"		
Dominion Bank, Dufferin St. and Lappin Ave	"		
Dominion Bank, Roncesvalles Ave.	"		
Dominion Bank of Canada, Danforth av.	"		
Home Bank of Canada, Head Office, 8 King St. West.	"		
Home Bank of Canada, Church St	"		

Molsons Bank, Queen St. West Branch.	Toronto, O.	Standard Bank of Canada, Dovercourt Rd., North Toronto, O.	
Northern Crown Bank.	"	Standard Bank of Canada, McCaul St.	"
Northern Crown Bank, 34 King St. West.	"	Sterling Bank of Canada, Head Office	"
Northern Crown Bank, Agnes Street	"	Sterling Bank of Canada, College and Grace Sts.	"
Northern Crown Bank, Spadina Ave.	"	Sterling Bank of Canada, Adelaide and Simcoe Sts.	"
Royal Bank of Canada.	"	Sterling Bank of Canada, Church St. and Wilton Ave.	"
Royal Bank of Canada, Avenue Road.	"	Sterling Bank of Canada, Parliament St.	"
Royal Bank of Canada, Bloor Dovercourt Sts.	"	Sterling Bank of Canada, Yonge and Carlton Sts.	"
Royal Bank of Canada, Danforth Ave.	"	Sterling Bank of Canada, Parkdale branch.	"
Royal Bank of Canada, Gerrard and Logan.	"	Sterling Bank of Canada, West Toronto.	"
Royal Bank of Canada, Jones and Gerrard.	"	Union Bank of Canada	"
Royal Bank of Canada, Church	"	Union Bank of Canada, Pape and Danforth.	"
Royal Bank of Canada, Queen and Broadview	"	Union Bank of Canada, Church and Wellesley	"
Royal Bank of Canada, Cor. King and Spadina Ave.	"	Union Bank of Canada, Eglinton St.	"
Royal Bank of Canada Union Stock Yards.	"	Union Bank of Canada, Bloor and Clinton	"
Royal Bank of Canada, Richmond and Yonge.	"	Union Bank of Canada, Sunnyside.	"
Royal Bank of Canada, Yonge and Bloor	"	Union Bank of Canada Terauley and Gerrard Sts.	"
Royal Bank of Canada, Yonge and Carlton	"	Union Bank of Canada, 1170 Yonge St	"
Royal Bank of Canada, College and Bathurst Sts.	"	Union Bank of Canada, Gerrard and Greenwood Sts.	"
Standard Bank of Canada Head Office	"	Royal Bank of Canada, Tottenham, O.	
Standard Bank of Canada, Bay St., Temple Building.	"	Bank of British North America, Sub-Branch,	Trail, B.C.
Standard Bank of Canada, Bloor and Ossington	"	Bank of Montreal.	"
Standard Bank of Canada, Cor. College and Clinton.	"	Canadian Bank of Commerce, Transcona, Man.	
Standard Bank of Canada, St. Lawrence Market	"	Bank of Toronto	"
Standard Bank of Canada, Parkdale Branch	"	Standard Bank of Canada, Travers, Alta.	
Standard Bank of Canada, Broadview Ave.	"	Bank of Hamilton.	Treherne, Man.
Standard Bank of Canada, Roncesvalles Ave.	"	Canadian Bank of Commerce, "	
Standard Bank of Canada, Eglinton.	"	Bank of Nova Scotia.	Trenton, N.S.
Standard Bank of Canada, Yonge St.	"	Bank of Montreal.	Trenton, O.
Standard Bank of Canada, Avenue Road	"	Molsons Bank	"
Standard Bank of Canada, West Toronto	"	Standard Bank of Canada	"
		Royal Bk. of Can.	Trinity, Nfld.
		Merchants Bank of Canada, Trochu, Alta.	
		La Banque Nationale, Trois Pistoles, Q.	
		Molsons Bank.	"

Bank of Nova Scotia.	Truro, N.S.	Canadian Bank of Commerce, Hastings and Cambie.	Vancouver, B.C.
Canadian Bank of Commerce, "	"	Canadian Bank of Commerce, Kitsilano.	"
Royal Bank of Canada.	"	Canadian Bank of Commerce Mt. Pleasant.	"
Canadian Bank of Commerce, Tugaske, Sask.		Canadian Bank of Commerce, North Vancouver.	"
Canadian Bank of Commerce, Turtleford, Sask.		Canadian Bank of Commerce, Powell St.	"
Bank of Hamilton.	Tuxford, Sask.	Dominion Bank.	"
Bank of Montreal.	Tweed, O.	Imperial Bank of Canada.	"
Royal Bank of Canada.	"	Imperial Bank of Canada, Fairview.	"
Bank of Nova Scotia, Twillingate, Nfld.		Imperial Bank of Canada, Hastings and Abbott.	"
Royal Bank of Canada, Tyne Valley, P.E.I.		Merchants Bank of Canada, Granville St.	"
Standard Bank of Canada.	Udora, O.	Merchants Bank of Canada, Hastings st	"
Royal Bank of Can. Union Bay, B.C.		Molsons Bank.	"
Standard Bank of Canada, Unionville, Ont.		Northern Crown Bank.	"
Merchants Bank of Canada, Unity, Sask.		Northern Crown Bank Mt. Pleasant.	"
Dominion Bank.	Uxbridge, O.	Royal Bank of Canada.	"
Sterling Bank of Canada.	"	Royal Bank of Canada, Bridge St.	"
Banque Provinciale du Canada, Val-Brilliant, Q.		Royal Bank of Canada, Cordova St.	"
Canadian Bank of Commerce, Valcourt, Q.		Royal Bank of Canada, East End.	"
Banque d'Hochelaga.	Valleyfield, Q.	Royal Bank of Canada, Davie St.	"
Banque Provinciale du Canada, "		Royal Bank of Canada, Mount Pleasant.	"
La Banque Nationale.	"	Royal Bank of Canada, Hillcrest.	"
Bank of British North America, Vancouver, B.C.		Royal Bank of Canada, Robson St.	"
Bank of Hamilton.	"	Royal Bank of Canada, Fairview.	"
Bank of Hamilton, East Vancouver Br.	"	Royal Bank of Canada, Grandview.	"
Bank of Hamilton, North Vancouver Br.	"	Royal Bank of Canada, Broadway East.	"
Bank of Hamilton, South Vancouver Br.	"	Royal Bank of Canada, Kitsilano.	"
Bank of Montreal.	"	Standard Bank of Canada.	"
Bank of Montreal, Main St.	"	Union Bank of Canada.	"
Bank of Montreal, Prior Street.	"	Union Bank of Canada, Mt. Pleasant.	"
Bank of Nova Scotia, Hastings St.	"	Union Bank of Canada, Cordova St.	"
Bank of Nova Scotia, Granville St.	"		
Bank of Ottawa.	"		
Bank of Toronto.	"		
Canadian Bank of Commerce.	"		
Canadian Bank of Commerce, East.	"		
Canadian Bank of Commerce, Commercial Drive.	"		
Canadian Bank of Commerce, Fairview.	"		

Union Bank of Canada. Vanguard, Sask.
Banque d'Hochelaga, Vankleek Hill, O.
 Bank of Ottawa . . . "
 Banque d'Hochelaga . . . Varennes, Q.
 Banque Provinciale . . . "
 Bank of British North America. "
 Sterling Bank of Canada, Varna, O.
 Royal Bank of Canada. . . Vars, O.
 La Banque Nationale . . Vaudreuil, Q.
 Merchants Bank of Canada "
 Canadian Bank of
 Commerce. . . . Vegreville, Alta.
 Merchants Bank of Canada. "
 Northern Crown Bank . . Venn, Sask.
Banque Provinciale du Canada,
 Vercheres, Q.
 Bank of British North
 America. Verdun, Q.
 Banque d'Hochelaga. . . . "
 Home Bank of Canada . . . "
 Merchants Bank of Canada . . "
 Canadian Bank of Commerce,
 Vermillion, Alta.
 Royal Bank of Canada "
 Banque d'Hochelaga . . . Verner, O.
 Banque d'Hochelaga . . . Vernon, O.
 Bank of Montreal. . . . Vernon, B.C.
 Canadian Bank of Com-
 merce "
 Royal Bank of Canada. . . "
 Bank of Toronto. . . . Veteran, Alta.
 Bank of Toronto. . . . Vibank, Sask.
 Union Bank of Canada. Viceroy, Sask.
 Bank of British North America,
 Victoria, B.C.
 Bank of Montreal. . . . "
 Bank of Nova Scotia . . . "
 Bank of Toronto. . . . "
 Canadian Bank of Com-
 merce. "
 Canadian Bank of Com-
 merce, North "
 Canadian Bank of Com-
 merce, Oak Bay Ave. . . "
 Dominion Bank. . . . "
 Imperial Bank of Canada. "
 Merchants Bank of Canada. "
 Northern Crown Bank . . "
 Royal Bank of Canada . . "
 Royal Bank of Canada
 Douglas St. "
 Royal Bank of Canada
 Fort St. "
 Union Bank of Canada. "
 Standard Bank of Canada,
 Victoria Harbour, O.
 Bank of Nova Scotia, Victoria, P.E.I.

Royal Bank of Canada,
 Victoria West, B.C.
 Banque d'Hochelaga, Victoriaville, Q.
 Banque Provinciale du
 Canada. "
 Molsons Bank. "
 Union Bank of Canada, Vidora, Sask.
 Merchants Bank of Canada,
 Viking, Alta.
 La Banque d'Hochelaga,
 Ville Emard, Q.
 Banque d'Hochelaga. . Ville Marie, Q.
 Molsons Bank . . . "
 Bank of Ottawa. . . . Virden, Man.
 Canadian Bank of Commerce, "
 Union Bank of Canada, "
 Northern Crown Bank. Viscount, Sask.
 Canadian Bank of Commerce,
 Vonda, Sask.
 Bank of Hamilton. . . . Vulcan, Alta.
 Canadian Bank of Com-
 merce. "
 Canadian Bank of Commerce,
 Wadena, Sask.
 Sterling Bank of Canada. "
 Bank of British North America,
 Wakaw, Sask.
 Merchants Bank of Canada.
 Wainwright, Alta.
 Union Bank of Canada. "
 Bank of British North America,
 Wakaw, Sask.
 Northern Crown Bank, Waldeck, Sask.
 Bank of British North America,
 Waldron, Sask.
 Molsons Bank. Wales, O.
 Canadian Bank of Commerce,
 Walkerton, O.
 Merchants Bank of Can-
 ada. Walkerton, O.
 Canadian Bank of Commerce
 Walkerville, O.
 Dominion Bank "
Home Bank of Can-
ada. "
 Merchants Bank of Can-
 ada. "
 Bank of Montreal. . Wallaceburg, O.
 Bank of Toronto. . . . "
 Merchants Bank of
 Canada "
 Union Bank of Canada, Wapella, Sask.
 Royal Bank of Canada, Wardsville, O.
 Union Bank of Canada, Warkworth, O.
 Canadian Bank of Commerce
 Warner, Alta.

Banque Provinciale du Canada, Warwick, Q.	Merchants Bank of Canada, Westport, O.
Standard Bank of Canada, Waseca, Sask.	Union Bank of Canada "
Union Bank of Canada, Waskada, Man.	Canadian Bank of Commerce, West Sheffield, Q.
Royal Bank of Canada, Waterdown, O.	Bank of British North America, West Toronto, O.
Bank of Montreal. Waterford, O.	Bank of Hamilton. "
Merchants Bank of Canada, "	Bank of Montreal. "
Canadian Bank of Commerce, Waterloo, Q.	Canadian Bank of Commerce, "
Molsons Bank. "	Dominion Bank. "
Bank of Toronto. Waterloo, O.	Molsons Bank. "
Canadian Bank of Commerce, "	Sterling Bank of Canada. "
Molsons Bank. "	Bank of Nova Scotia, Westville, N.S.
Canadian Bank of Commerce, Waterville, Q.	Canadian Bank of Commerce, Wetaskiwin, Alta.
Merchants Bank of Canada, Watford, O.	Imperial Bank of Canada, "
Sterling Bank of Canada "	Merchants Bank of Canada, "
Canadian Bank of Commerce, Watrous, Sask.	Bank of Montreal. Weyburn, Sask.
Union Bank of Canada. "	Canadian Bank of Commerce, "
Canadian Bank of Commerce, Watson, Sask.	Home Bank of Canada. "
Union Bank of Canada, Wawanesa, Man.	Royal Bank of Canada. "
Union Bank of Canada, Wawota, Sask.	Union Bank of Canada "
Union Bank of Canada, Webb, Sask.	Weyburn Security Bank, "
Royal Bank of Canada, Webbwood, Ont.	Royal Bank of Canada, Weymouth, N.S.
Canadian Bank of Commerce, Weedon, Q.	Merchants Bank of Canada, Wheatley, O.
Bank of Nova Scotia Welland, O.	Union Bank of Canada "
Bank of Montreal. "	Dominion Bank Whitby, O.
Bank of Toronto. "	Standard Bank of Canada "
Dominion Bank. "	Canadian Bank of Commerce, White Horse, Yukon
Imperial Bank of Canada "	Merchants Bank of Canada, Whitewood, Sask.
Royal Bank of Canada "	Royal Bank of Canada, Whitney Pier, N.S.
Sterling Bank of Canada, Wellandport, Ont.	Canadian Bank of Commerce, Wiaraton, O.
Standard Bank of Canada, Wellesley, O.	Union Bank of Canada. "
Bank of Nova Scotia. Wellington, O.	Canadian Bank of Commerce, Wilcox, Sask.
Standard Bank of Canada, "	Imperial Bank of Canada, Wilkie, Sask.
Union Bank of Canada, Wellwood, Man.	Union Bank of Canada "
Home Bank of Canada, Welwyn, Sask.	Molsons Bank. Williamsburg, O.
Bank of Nova Scotia, Wesleyville, Nfld.	Merchants Bank of Canada, Williamstown, O.
Royal Bank of Canada, West Fort William, O.	Canadian Bank of Commerce, Willow Brook, Sask.
Merchants bank of Canada, West Lorne, O.	Canadian Bank of Commerce, Willow Bunch, Sask.
Union Bank of Canada, "	Union Bank of Canada, Winchester, O.
Bank of Nova Scotia, Westmount, Q.	Bank of Ottawa. "
Royal Bank of Canada, Green Av. Br. "	Bank of Montreal Windsor, O.
Royal Bank of Canada, 4848 Sherbrooke, cor Victoria Ave. "	Banque Provinciale du Canada. "
Bank of British North America, Weston, O.	Banque Provinciale du Canada, Wyandotte St. "
Bank of Nova Scotia. "	Canadian Bank of Commerce, "
	Dominion Bank "

Imperial Bank of Canada,		Dominion Bank, Notre	
Windsor, O.		Dame.	Winnipeg, Man.
Merchants Bank of Canada.	"	Dominion Bank, North End	
Standard Bank of Canada.	"	Br.	"
Royal Bank of Canada.	"	Dominion Bank, Portage av.	"
Bank of Nova Scotia. .Windsor, N.S.		Home Bank of Canada.	"
Canadian Bank of Commerce.	"	Imperial Bank of Canada,	"
Royal Bank of Canada	"	Imperial Bank of Canada,	
Banque Provinciale du Canada,		North End.	"
Windsor Mills, Q.		Merchants Bank of Canada,	"
Canadian Bank of Commerce.	"	Merchants Bank of Canada,	
Union Bank of Canada.		Bannerman Ave.	"
Windthorst, Sask.		Molsons Bank.	"
Bank of Hamilton. . . .Wingham, O.		Molsons Bank, Portage Ave.	"
Canadian Bank of Commerce.	"	Northern Crown Bank,	
Dominion Bank.	"	Head Office	"
Bank of Hamilton. . .Winkler, Man.		Northern Crown Bank, Main	
Union Bank of Canada, Winnifred, O.		St. and Selkirk Ave. Br.	"
Bank of British North America,		Northern Crown Bank, Wil-	
Winnipeg, Man.		liam Ave.	"
Bank of British North		Northern Crown Bank, cor.	
America, McGregor		Portage Ave. and Sher-	
and Selkirk Sts.	"	brooke.	"
Bank of Hamilton	"	Royal Bank of Canada .	"
Bank of Hamilton		Royal Bank of Canada,	
Princess St. Branch	"	Grain Exchange.	"
Bank of Hamilton,		Standard Bank of Canada,	"
Norwood St.	"	Standard Bank of Canada,	
Bank of Montreal	"	Portage Ave. Br.	"
Bank of Montreal,		Sterling Bank of Canada,	"
Fort Rouge Branch	"	Union Bank of Canada,	
Bank of Montreal,		Head Office, Main St. cor	
Logan Ave.	"	William. See advt. p.	
Bank of Nova Scotia	"	106.	"
Bank of Nova Scotia, Elm-		Union Bank of Canada,	
wood Branch	"	Logan Ave. Br.	"
Bank of Ottawa.	"	Union Bank of Canada,	
Bank of Ottawa, St. James	"	North End Br.	"
Bank of Toronto	"	Union Bank of Canada, Sar-	
Banque d'Hochelega.	"	gent ave. Br.	"
Canadian Bank of Com-		Union Bank of Canada.	
merce.	"	Corydon Ave.	"
Canadian Bank of Com-		Union Bank of Canada.	
merce, North End Br.	"	Portage Ave.	"
Canadian Bank of Commerce.		Union Bank of Canada	
Elmwood St.	"	Portage and Arling-	
Canadian Bank of Commerce.		ton.	"
Alexander av.	"	Union Bank of Canada, Por-	
Canadian Bank of Commerce.		tag and Garry.	"
Blake St.	"	Royal Bank of Canada . .Winona, O.	
Canadian Bank of Commerce.		Canadian Bank of Commerce,	
Fort Rouge	"	Wiseton, Sask.	
Canadian Bank of Commerce.		Bank of Montreal. . . .Wolfville, N.S.	
Portage Ave.	"	Royal Bank of Canada	"
Canadian Bank of Commerce.		Bank of Toronto. . . .Wolseley, Sask.	
Keloin St.	"	Union Bank of Canada	"
Dominion Bank, 40 Main.	"	Northern Crown Bank, Woodbridge, O.	
Dominion Bank, St. John.	"	Bank of Montreal. . . .Woodstock, N.B.	
Dominion Bank, Arlington St.	"		

Bank of British North
America, 52 Wall St., New York, U.S.
Bank of Montreal. "
Bank of Nova Scotia,
48 Wall St. "
Canadian Bank of Com-
merce "
Merchants Bank of Can-
ada, 63-65 Wall St. "
Royal Bank of Canada
cor. William and Ce-
dar Sts. "
Union Bank of Canada,
49 Wall St. "
Royal Bank of Canada, Nuevitas, Cuba
Royal Bank of Canada,
Palma Soriano, Cuba.
La Banque Nationale,
14 rue Auber. Paris, France
Royal Bank of Canada,
Pinar del Rio, Cuba
Royal Bank of Canada,
Ponce, Porto Rico
Bank of Nova Scotia,
Port Antonio, Jamaica
Canadian Bank of Commerce,
Portland, Oregon
Bank of Nova Scotia,
Port Maria, Jamaica
Royal Bank of Canada,
Port of Spain, Trinidad
Royal Bank of Canada,
Puerto Padre, Cuba
Royal Bank of Canada,
Roseau, Dominica
Royal Bank of Canada,
Sagua la Grande, Cuba

Bank of Nova Scotia,
St. Ann's Bay, Jamaica
Royal Bank of Canada,
St. George's, Grenada
Royal Bank of Canada,
St. John's, Antigua
Royal Bank of Canada,
Sanchez, D.R.
Royal Bank of Canada,
Sancti Spiritus, Cuba
Royal Bank of Canada,
San Fernando, Trinidad
Bank of British North America,
264 California. San Francisco, Cal.
Canadian Bank of
Commerce. "
Bank of Nova Scotia .San Juan, P.R.
Royal Bank of Canada "
Royal Bank of Canada,
San Pedro de Macoris, Dom. Republic
Royal Bank of Canada,
Santa Clara, Cuba
Royal Bank of Canada, Santiago, Cuba
Royal Bank of Canada,
Santiago de los Caballeros
Royal Bank of Canada,
Santo Domingo, Dom. Republic
Bank of Nova Scotia,
Savanna-la-Mar, Jamaica
Canadian Bank of Commerce,
Seattle, Wash., U.S.
Bank of Nova Scotia,
Spanish Town, Jamaica, W.I.
Bank of Montreal,
Spokane, Wash., U.S.

MESCALL'S

UP TO DATE SHORT CUT IN FIGURES & EXPERT CALCULATOR

FOR

BOOK-KEEPERS, STUDENTS, MERCHANTS,
MANUFACTURERS, STOREKEEPERS,
MECHANICS, FARMERS, Etc.

Attention is particularly called to the Short Methods in Addition, Subtraction, Multiplication and Division, Decimals, Merchandising, Trade Discounts, Interest, Percentage, Marking Goods Table, Extraction of Roots, Mensuration etc.

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PRICE FIFTY CENTS

BANKS OF THE DOMINION.

THE BANK OF BRITISH NORTH AMERICA.

Established in 1836.

Incorporated by Royal Charter in 1840.

HEAD OFFICE, 5 Gracechurch Street, London, E.C.

HEAD OFFICE IN CANADA, 140 St. James Street, Montreal.

Paid-up Capital, \$4,866,666.67; Reserve Fund, \$3,017,333.34. Undivided Profits, \$332,955.47.

Dividend, 8 per cent. per annum, payable 7th April and 7th October.

DIRECTORS.

Lt.-Col. F. R. S. Balfour
J. H. Brodie
J. H. Mayne Campbell
E. A. Hoare
G. D. Whatman

Lt. E. G. Hoare
Frederick Lubbock
Hon. A. R. Mills, M.P.
Major C. W. Tomkinson

Secretary—Capt. J. Dodds

HEAD OFFICE IN CANADA.

H. B. Mackenzie, General Manager.

LA BANQUE PROVINCIALE DU CANADA.

HEAD OFFICE, MONTREAL.

Capital Authorized—\$2,000,000.

Capital Paid up, \$1,700,000; Reserve Fund, \$700,000.

Dividend, 7 per cent. per annum, payable 1st January, April, July and October.

DIRECTORS.

President—H. Laporte; Vice-Presidents—Wm. F. Carley, Tanerede Bienvenu.

M. Chevalier

L. J. O. Beauchemin

G. M. Bosworth

Hon. Alphonse Racine

General Manager—Tanerede Bienvenu.

THE CANADIAN BANK OF COMMERCE.

HEAD OFFICE, TORONTO.

Capital Paid up, \$15,000,000; Rest, \$13,500,000.

Dividend, 10 per cent., payable quarterly. Bonus of 1 per cent. paid December 1, 1913.

DIRECTORS.

President—Sir Edmund Walker, C.V.O., LL.D., D.C.L., LL.D.

Vice-President—Z. A. Lash, K.C., LL.D.

John Hoskin, Esq., K.C., LL.D.

Sir John Morison Gibson,

K.C.M.G., K.C., LL.D.

A. Kingman, Esq.

Hon. Sir Lyman Melvin Jones

Hon. W. C. Edwards

J. W. Flavelle, Esq., LL.D.

E. R. Wood, Esq.

Robert Stuart, Esq.

G. F. Galt, Esq.

Wm. Farwell, Esq., D.C.L.

Geo. G. Foster, Esq., K.C.

Chas. Colby, Esq., M.A., Ph.D.

A. C. Flumerfelt, Esq.

G. W. Allan, Esq.

H. J. Fuller, Esq.

F. P. Jones, Esq.

Herbert C. Cox, Esq.

John Aird, General Manager.

H. V. F. Jones, Assistant General Manager.

DOMINION BANK.

Established 1871.

HEAD OFFICE, TORONTO.

Capital Paid up, \$6,000,000; Reserve Fund, \$7,000,000; Undivided Profits, \$363,442.39; Total Deposits, \$70,473,614.03.

Dividend, 12 per cent. per annum, payable 1st January, April, July, October.

DIRECTORS.

President—Sir Edmund B. Osler, M.P.; Vice-President, W. D. Matthews.

A. W. Austin

J. C. Eaton

W. R. Brock

J. J. Foy, K.C., M.L.A.

James Carruthers

E. W. Hamber

R. J. Christie

H. W. Hutchinson

A. M. Nanton.

C. A. Bogert, General Manager.

BANK OF HAMILTON.

Established 1872.

Incorporated by Act of Parliament.

HEAD OFFICE, HAMILTON.

Capital Authorized, \$5,000,000; Paid up, \$3,000,000; Reserve Fund, \$3,300,000; Undivided Profits, \$209,556.57; Total

Assets, \$57,163,344.46.

Dividend, 12 per cent. per annum, payable 1st March, June, September and December.

BOARD OF DIRECTORS.

President—Sir John S. Hendrie, K.C.M.G.; Vice-President—Cyrus A. Birge.

James Turnbull

Robt. Hobson

C. C. Dalton

W. A. Wood

W. E. Phin

I. Pitblado, K.C.

See Advt. page 201

BANQUE D'HOCHELAGA.

HEAD OFFICE, MONTREAL.

Capital Authorized, \$4,000,000; Capital Paid up, \$4,000,000; Rest, \$3,700,000.

Dividend, 9 per cent. per annum, payable 1st March, June, September and December.

DIRECTORS.

President—J. A. Vaillancourt; Vice-President—Hon. F. L. Beique.

W. W. Bonner

A. Turcotte

A. A. Larocque

Hon. J. M. Wilson

E. H. Lemay.

THE HOME BANK OF CANADA.

HEAD OFFICE, TORONTO, ONT.

Capital Authorized, \$5,000,000; Paid up, \$1,946,373.18; Rest, \$300,000.
 Dividends, 1 per cent. quarterly, payable 1st March, 1st June, 1st September and December.

DIRECTORS.

President—Brig. General The Hon. James Mason; Vice-President—
 M. J. Haney.
 C. A. Barnard, K.C. Thos. A. Crerar, Winnipeg, Man.
 Thos. Flynn John Persse, Winnipeg, Man.
 J. Kennedy, Winnipeg, Man. A. Claude MacDonell, K.C., M.P.

IMPERIAL BANK OF CANADA.

HEAD OFFICE, TORONTO.

Capital Authorized, \$10,000,000.
 Capital Paid up, \$7,000,000; Reserve Fund, \$7,000,000.
 Dividend, 12 per cent. per annum, payable 1st February, May, August and November.

DIRECTORS.

President—Peleg Howland; Vice-President—Elias Rogers.
 Wm. Ramsay Cawthra Mulock
 Sir Jas. Aikens Hon. Richard Turner
 Lt.-Col. J. F. Michie Wm. Hamilton Merritt, M.D.
 Hon. W. J. Hanna W. J. Gage
 John Northway.

THE MERCHANTS BANK OF CANADA.

HEAD OFFICE, MONTREAL.

Capital Paid up, \$7,000,000; Reserve Fund and Undivided Profits,
 \$7,250,984.
 Dividend, 10 per cent. per annum, payable 1st February, May, August and November.

DIRECTORS.

President—Sir H. Montagu Allan; Vice-President—K. W. Blackwell.
 Thos. Long A. J. Dawes
 A. A. Allan F. Howard Wilson
 Alex. Barnet Farquhar Robertson
 F. Orr Lewis Geo. L. Cains
 C. C. Ballantyne Alfred B. Evans
 E. F. Hebden, General Manager.
 See Advt., page 542.

THE MOLSONS BANK.

HEAD OFFICE, MONTREAL.

Capital Paid up, \$4,000,000; Reserve Fund, \$4,800,000.
 Dividend, 11 per cent. per annum, payable 1st January, April, July and October.

DIRECTORS.

President—Wm. Molson Macpherson; Vice-President—S. H. Ewing.
 Geo. E. Drummond F. W. Molson
 E. J. Chamberlin Wm. M. Birks
 W. A. Black.
 E. C. Pratt, General Manager.
 See Advt., page inside of front cover.

BANKS OF THE DOMINION.

BANK OF MONTREAL.

Established 1817.

Incorporated by Act of Parliament.

HEAD OFFICE, MONTREAL.

Capital Paid up, \$16,000,000; Rest, \$16,000,000; Undivided Profits, \$1,414,423.

Dividend, 10 per cent. per annum, payable 1st March, June, September and December.

DIRECTORS.

President—Sir Vincent Meredith, Bart.; Vice-President—C. B. Gordon.

R. B. Angus, Esq.

Sir William Macdonald

Lord Shaughnessy, K.C.V.O.

D. Forbes Angus, Esq.

C. R. Hosmer, Esq.

A. Baumgarten, Esq.

H. R. Drummond, Esq.

Wm. McMaster, Esq.

Capt. Herbert Molson

Harold Kennedy

Sir Frederick Williams-Taylor, General Manager.

See Advt., page 137.

THE MONTREAL CITY AND DISTRICT SAVINGS BANK.

HEAD OFFICE, MONTREAL.

Capital Subscribed, \$2,000,000; Capital Paid up, \$1,000,000; Reserve Fund, \$1,350,000.

DIRECTORS.

President—Hon. Raoul Dandurand; Vice-President—Richard Bolton.

G. N. Moncel

Sir Lomer Gouin

F. W. Molson

Hon. Sir Evariste LeBlanc

Hon. C. J. Doherty

Donald A. Hingston

Clarence F. Smith

H. H. Judah

A. P. Lesperance, General Manager.

LA BANQUE NATIONALE.

HEAD OFFICE, QUEBEC.

Capital Authorized, \$5,000,000; Capital Subscribed, \$2,000,000;

Capital Paid up, \$2,000,000; Reserve Fund, \$1,900,000;

Profit and Loss Account, \$54,843.25.

Dividend, 8 per cent. per annum, payable 1st May, 1st February, 1st August and 2nd November.

DIRECTORS.

President—R. Audette; Vice-President—Hon. J. B. Laliberte.

V. Chateauvert

Naz. Fortier

Nap. Lavoie

Nap. Drouin

C. Pettigrew.

THE BANK OF NEW BRUNSWICK.

Amalgamated with the Bank of Nova Scotia.

BANK OF NOVA SCOTIA.

HEAD OFFICE, HALIFAX, N.S.

GENERAL MANAGER'S OFFICE, TORONTO.

Capital: Authorized, \$10,000,000; Paid up, \$6,500,000; Reserve Fund, \$12,000,000.

Dividend, 14 per cent. per annum, payable 1st January, April, July and October.

DIRECTORS.

President—John Y. Payzant; Vice-President—Chas. Archibald.

G. S. Campbell

Hector McInnes

M. C. Grant

Hon. N. Curry

J. W. Allison

W. D. Ross

James Manchester

Walter W. White, M.D.

S. J. Moore.

THE BANK OF OTTAWA.

HEAD OFFICE, OTTAWA, ONT.

Capital Authorized, \$5,000,000; Capital Subscribed, \$4,000,000;

Capital Paid up, \$4,000,000; Rest and Undivided

Profits, \$4,868,179.64.

Dividend, 12 per cent. per annum, payable 2nd March, 1st June, 1st September and 1st December.

DIRECTORS.

President—Hon. Geo. Bryson; Vice-President—John B. Fraser.

Russell Blackburn

Alexander MacLaren

Sir Henry K. Egan

Geo. Burn

Edwin C. Whitney

Hon. George H. Perley

D. M. Finnie, General Manager.

W. Duthie, Chief Inspector.

PROVINCIAL BANK OF CANADA.

(See La Banque Provinciale du Canada.)

ROYAL BANK OF CANADA.

HEAD OFFICE, MONTREAL.

Capital Authorized, \$25,000,000; Capital Paid up, \$12,000,000;

Reserve and Undivided Profits, \$13,412,346.

Dividend, 12 per cent. per annum, payable quarterly.

DIRECTORS.

President—Sir H. S. Holt; Vice-President—E. L. Pease; 2nd Vice-President—E. F. B. Johnston, K.C.

G. H. Duggan

Hugh Paton

C. C. Blackader

Sir M. B. Davis

Jas. Redmond

Wm. Robertson

G. R. Crowe

A. J. Brown, K.C.

D. K. Elliott

W. J. Sheppard

Hon. W. H. Thorne

C. S. Wilcox

A. E. Dymert

C. E. Neill

G. G. Stuart, K.C.

John T. Ross

R. MacD. Paterson.

Edson L. Pease, General Manager.

See Advt., page 202.

THE STANDARD BANK OF CANADA.

HEAD OFFICE, TORONTO.

Capital Authorized, \$5,000,000; Paid up, \$3,333,242.14; Reserve Fund and Undivided Profits, \$4,486,835.77.

Dividend, 13 per cent. per annum, payable 1st February, May, August and November.

DIRECTORS.

President—W. F. Cowan; Vice-President—Wellington Francis, K.C.

W. F. Allen

T. H. McMillan

F. W. Cowan

H. Langlois

T. H. Wood.

Gen'l Manager—C. H. Easson; Ass't Gen'l Manager—John S. Loudon.

THE STERLING BANK OF CANADA.

HEAD OFFICE, TORONTO, ONT.

Capital Authorized, \$3,000,000; Paid up, \$1,206,299.61.

DIRECTORS.

President—G. T. Somers; Vice-President—W. K. George.

R. W. Eaton

Wm. Dineen

Lt.-Col. Noel Marshall

H. Wilberforce Aikins, B.A., M.D.,

Sidney Jones

M.R.C.S. (Eng.)

J. T. Gordon

BANK OF TORONTO.

HEAD OFFICE, TORONTO.

Capital Authorized, \$10,000,000; Subscribed, \$5,000,000; Paid up, \$5,000,000; Reserve Fund, \$6,000,000.

Dividend, 11 per cent. per annum, with Bonus of 1 per cent. for 1912 and 1913, payable quarterly 1st March, 1st June, 1st September, 1st December.

DIRECTORS.

President—W. G. Gooderham; Vice-President—Joseph Henderson.

William Stone

Brig.-Gen. Frank S. Meighen

John Macdonald

J. L. Englehart

Lt.-Col. A. E. Gooderham

Wm. I. Gear

Paul J. Myles

Arch. H. Campbell

Thos. F. How, General Manager.

UNION BANK OF CANADA.

HEAD OFFICE, WINNIPEG.

Capital Paid up, \$5,000,000; Rest, \$3,400,000.

Dividend, 8 per cent. per annum, and a Bonus of 1 per cent. for 1913, payable quarterly, 1st March, June, September, December.

DIRECTORS.

Honorary President—Sir Wm. Price; President—John Galt; Vice-

Presidents—R. T. Riley and G. H. Thomson.

M. Bull

B. B. Cronyn

W. R. Allan

E. L. Drewry

Maj. Gen. J. Carson

J. S. Hough

R. O. McCullough

F. B. Kenaston

W. Shaw

F. W. Heubach

Stephen Haas

Hume Blake, K.C.

G. H. Balfour

E. E. A. DuVernet, K.C.

General Manager, H. B. Shaw;

Asst. General Manager, J. W. Hamilton.

See Advt., page 202.

MISCELLANEOUS COMPANIES.

AMES, HOLDEN, McCREADY COMPANY, LIMITED.

MONTREAL.

Incorporated March 8, 1911; Capital Stock issued: \$2,500,000 Preferred; \$3,500,000 Common.

President—D. Lorne McGibbon; Vice-Presidents—Sir Herbert Ames, N. R. Feltes; Treasurer—N. R. Feltes; Secretary—S. J. Le Huray.

DIRECTORS.

D. Lorne McGibbon.	S. J. Le Huray.
N. T. Feltes	Sir Herbert Ames.
Hon. C. P. Beaubien.	Sir Thos. Tait.
Hon. Wallace Nesbitt, K.C.	Hon. N. Curry.
Victor E. Mitchell, K.C.	C. S. Jennison
R. E. Dildine.	Shirley Ogilvie.

W. V. Mathews.

Dates on which Dividends are payable—Preferred, 1st January, April, July and October. Rate of last Dividend, 7 per cent. per quarter.

ASBESTOS CORPORATION OF CANADA, LIMITED.

MONTREAL.

Incorporated April 30, 1912; Capital Stock: Bonds, \$3,000.00; Preferred, \$4,000.00; Common, \$3,000.00.

President—W. G. Ross; Vice-President—H. E. Mitchell; Secretary—Treasurer—J. T. McCallum.

DIRECTORS.

Dr. C. W. Colby.	H. J. Fuller.
U. H. McCarter.	Thos. McDougall.
Wm. McMaster.	

J. D. Sharpe, Manager.

Rate of last Dividend, 1 per cent. on Preferred Stock paid 15th February, 1917.

BARCELONA TRACTION LIGHT & POWER CO., LIMITED.

TORONTO.

Incorporated, September, 1911; Capital Stock, \$27,450,000 Common; \$8,483,500 Preferred.

President—E. R. Peacock; Vice-Presidents—R. C. Brown, H. M. Hubbard, Milton Last; Secretary—R. H. Merry, Toronto; Assistant Secretary—T. Porter, London, Ont.

DIRECTORS.

R. C. Brown.	Miller Last.
Maurice Banwens.	J. S. Lovell.
A. W. Burchard.	Enrique Parellada.
Fernando Fabra.	H. F. Parshall.
Marquis de Alella.	E. R. Peacock.
Conde Torroella de Montgri.	J. H. Plummer.
Robt. Gowans.	Domingo Serti.
H. M. Hubbard.	E. R. Wood.

THE BELL TELEPHONE COMPANY OF CANADA.

HEAD OFFICE, MONTREAL.

Incorporated 1880; Capital Stock, \$18,000,000.

Chairman—Chas. F. Sise; President—L. B. McFarlane; Vice-President
Chas. Cassils; Treasurer—W. G. Slack.

DIRECTORS.

C. F. Sise.	L. B. McFarlane.
Theo. N. Vail.	Z. A. Lash, K.C.
A. J. Dawes.	Thos. Ahearn.
Charles Cassils.	U. N. Bethell.
F. W. Molson.	C. F. Sise, Jr.
Hugh Paton.	W. F. Angus.

W. H. Black, Secretary.

Dates on which Dividends are payable, 15th January, April, July
and October. Rate of last Dividend, 2 per cent. per quarter.

BRAZILIAN TRACTION LIGHT & POWER COMPANY, LTD.

TORONTO.

Incorporated, 12th July, 1912; Capital Stock, Ordinary, \$106,289,100;
Preference, \$10,000,000.Chairman—Sir Wm. Mackenzie; President—Alex. Mackenzie; Vice-
Presidents—Z. A. Lash, K.C., E. R. Wood, H. Malcolm
Hubbard, Millar Lash, E. R. Peacock.

DIRECTORS.

D. B. Hanna.	R. M. Horne-Payne.
Sir Henry Pellatt.	H. F. Parshall, D.Sc.
Hon. F. H. Phippen, K.C.	R. C. Brown.
Clarence Dillon.	Wm. Bain.

Dates on which Dividends are payable: Ordinary, March, June,
September and December, 1 per cent.; Preference, January,
April, July and October, 1½ per cent.

CANADA CAR AND FOUNDRY COMPANY, LIMITED

Incorporated, 29th October, 1910; Capital Stock, \$11,725,000.00.

President—Hon. N. Curry.

Vice-President and Managing Director—W. W. Butler.

Vice-President and Treasurer—F. A. Skelton.

Vice-President—V. G. Curry; Secretary—Arnold Wainwright, K.C.

DIRECTORS

Hon. N. Curry.	W. W. Butler.
K. W. Blackwell.	W. F. Angus.
Geo. E. Drummond.	V. G. Curry.

F. A. Skelton.

Dates on which last dividends were paid: July 20th, 1914, 1¼ per
cent. for 3 months ending June 30th, 1914, on Preferred; 2 per cent.
June 2nd, 1914, for 6 months ending March 31st, 1914, on
Common.

CANADA CEMENT COMPANY, LIMITED.

MONTREAL.

Incorporated, August, 1909; Capital Stock, \$30,000,000.

President—Hon. W. C. Edwards; Vice-Presidents—J. M. Kilbourn,
F. P. Jones; Secretary-Treasurer—H. L. Doble.

DIRECTORS.

Lt.-Col. C. C. Ballantyne.	G. E. Drummond.
Farquhar Robertson.	E. M. Young.
R. W. Kelley.	D. M. Butchart.
H. C. Cox.	Angus MacLean.
Dr. R. E. Webster.	Henry Jones Fuller.

F. P. Jones, General Manager.

A. C. Tagge, Assistant General Manager.

Dates on which Dividends are payable: Preferred, 16th February,
March, August and November, 7 per cent.; Common, 16th
January, April, July and October, 6 per cent.

CANADA LANDED & NATIONAL INVESTMENT COMPANY,
LIMITED.

TORONTO.

Incorporated, January, 1891; Capital Stock, \$1,205,000 paid up.

President—John Hoskin, K.C., LL.D., D.C.L.; Vice-President—D.
E. Thomson, K.C., LL.D.

DIRECTORS.

G. Tower Fergusson.	F. W. Harcourt, K.C.
Wm. Mulock.	Jas. Playfair.
Newman Silverthorn.	

Edward Saunders, Managing Director.

Dates on which Dividends are payable, 1st, January, April, July and
October. Rate of last Dividend, 2 $\frac{1}{4}$ per cent. quarterly.

CANADA PERMANENT MORTGAGE CORPORATION.

HEAD OFFICE, TORONTO.

Incorporated, 1899; Original Incorporation as Canada Permanent
Loan and Savings Company, 1855; Capital Stock (paid-up),
\$6,000,000; Reserve Fund, (earned,) \$5,000,000; Investments,
\$32,264,782.81.

President—W. G. Gooderham; 1st Vice-President—W. D. Matthews;
2nd Vice-President—G. W. Monk.

DIRECTORS.

Lt.-Col. A. E. Gooderham.	F. Gordon Osler.
J. H. G. Hagarty.	John Massey.
R. S. Hudson.	E. R. C. Clarkson.

John Campbell, S.S.C., Edinburgh.

R. S. Hudson and John Massey, Joint General Managers.

Superintendent of Branches and Secretary—George H. Smith.

Dates on which Dividends are payable, January, April, July and
October. Rate of last Dividend, 10 per cent.

CANADA STEAMSHIP LINES, LIMITED.

HEAD OFFICE, MONTREAL.

Incorporated, 17th June, 1913; Capital Stock, \$25,000,000.

President—Jas. Carruthers; Vice-President—J. W. Norcross; Comptroller—F. S. Isard; Treasurer—J. S. Hobson; Secretary—F. P. Smith.

DIRECTORS.

Jas. Carruthers.

H. B. Smith.

C. A. Barnard, K.C.

George A. Smithers.

M. J. Haney.

D. B. Hanna.

J. W. Norcross.

J. C. Newman.

F. S. Isard.

J. E. Dalrymple.

Edmund Briscoe, K.C., M.P.

R. M. Wolvin.

CANADIAN CONVERTERS COMPANY, LIMITED.

MONTREAL.

Incorporated, 13th July, 1906; Capital Stock, \$1,733,500, paid up.

President—Jas. R. Gordon; Vice-President—Jas. H. Laing; Secretary-Treasurer—Thos. M. Barrington.

DIRECTORS.

John Baillie.

Thos. J. Rodger.

John M. Mackie.

G. N. Brooks.

J. Harvey Roy, General Manager.

Dates on which Dividends are payable, 15th February, May, August and November. No Dividend paid since May 15, 1915.

CANADIAN COTTONS, LIMITED.

MONTREAL.

Incorporated, 1892; Capital Stock: Preferred, \$3,661,500; Common, \$2,715,500.

President—Chs. R. Hosmer; Vice-President—A. A. Dawson; Secretary-Treasurer—A. Bruce.

DIRECTORS.

Hon. F. L. Beique, K.C.

Sir H. M. Allan.

A. O. Dawson.

Geo. Caverhill.

A. A. Morrice.

W. J. Morrice.

Dates on which Dividends are payable, 4th January, April, July and October. Rate of last Dividend: Preferred, 6 per cent.; Common, 4 per cent.

CANADIAN GENERAL ELECTRIC COMPANY, LIMITED.

HEAD OFFICE, TORONTO.

Incorporated, July 15, 1892; Capital Stock, \$12,000,000.

Hon. President and Chairman of the Board—W. R. Brock; President—Hon. Frederic Nicholls; Vice-Presidents—W. D. Matthew and A. E. Dymont.

DIRECTORS.

Sir Wm. Mortimer Clark,

LL.D., K.C.

H. C. Cox.

Sir Rodolphe Forget.

Sir Herbert Holt.

Col. the Hon. Sir John S. Hendrie.

Sir Wm. Mackenzie

F. Gordon Osler.

J. K. L. Ross.

General Manager—Hon. Francis Nicholls.

Secretary and Assistant General Manager—J. J. Ashworth.

Dates on which Dividends are payable, January 1, April 1, July 1 and October 1. Rate of last Dividend, 8 per cent.

THE CANADIAN PACIFIC RAILWAY COMPANY.

MONTREAL.

Incorporated, February 17, 1881; Capital Stock: \$260,000,000 Common; \$80,681,921.12 Preferred.

President and Chairman—Sir Thos. G. Shaughnessy, K.C.V.O.;
Vice-Presidents—I. G. Ogden, G. M. Bosworth, Geo. Bury,
E. L. Beatty, K.C., Vice-President and General Manager.

Dates on which Dividends are payable—1st April, 30th June, 1st October and 31st December. Rate of last Dividend—10 per cent. per annum on Common; 4 per cent. on Preferred.

CANADIAN EXPORTS PAPER COMPANY, LIMITED.

Incorporated 15th August, 1916; Capital Stock \$500,000.

President—Jas. M. McCarthy; Vice-President—Jos. A. Bothwell;
Secretary-Treasurer—W. F. Robinson.

DIRECTORS.

Geo. Chahoon, Jr.

Hubert Biermans.

CARRIAGE FACTORIES, LIMITED.

MONTREAL.

Incorporated, 24th September, 1909; Capital Stock: \$1,200,800 Preferred; \$1,200,000 Common.

President—Jas. B. Tudhope, Orillia, Ont.; Vice-Presidents—Thos. J. Storey, Brockville, Ont., Hugh Munro, M.P.P., Alexandria, Ont.; Secretary-Treasurer—W. Fred. Heney, Montreal, Que.; Auditor and Comptroller—Ernest Snowden, F.S.A.A. Eng.

DIRECTORS.

Jas. B. Tudhope, Orillia, Ont.
Capt. W. M. Weir, Montreal,
Que.
W. H. Tudhope, Orillia, Ont.

W. H. Heney, Montreal, Que.
T. J. Storey, Brockville, Ont.
Hugh Munro, M.P.P., Alexan-
dria, Ont.

CIVIC INVESTMENT AND INDUSTRIAL COMPANY,
LIMITED

Formed in 1916 for control of Montreal Light, Heat and Power Company, and Cedars Rapids Manufacturing and Power Company. Exchanged three shares for each share of Montreal Power Company and one share for each share of Cedars Rapids. Holds 98-year lease of above companies and guarantees fixed charges and operating expenses, etc., of both, and dividend of 8 per cent. per annum on Power Company and 3 per cent. on Cedars Rapids.

Capital Stock, \$63,300,00, issued (\$75,000,000 authorised).

President—Sir Herbert S. Holt; Vice-President—J. S. Norris;
Secretary-Treasurer—C. S. Bagg;
Assistant Secretary-Treasurer—G. R. Whalley.

DIRECTORS.

Sir H. Montagu Allan.
Geo. Caverhill.
Sir Rodolphe Forget.
J. E. Aldred, New York.

C. R. Hosmer.
Hon. Narcisse Perodeau.
Hon. H. B. Rainville.
Arthur Davis, Pittsburg.

Dividend rate, 4 per cent. per annum, paid 15th February, May, August and November.

THE CONSOLIDATED MINING & SMELTING COMPANY OF CANADA, LIMITED.

Incorporated, January 4, 1906; Capital Authorized, \$15,000,000.
 President—W. D. Matthews, Toronto; Vice-President—George Sumner, Montreal; Managing Director—Jas. J. Warren.

DIRECTORS.

Sir E. B. Osler, Toronto.	W. L. Matthews, Toronto.
Charles R. Hosmer, Montreal.	J. C. Hodgson, Montreal.
Wm. Farwell, Sherbrooke.	H. S. Osler, Toronto.

Secretary—J. Kitto.

Dates on which Dividends are payable, 1st January, April, July and October. Rate of last Dividend, $2\frac{1}{2}$ per cent.

THE CONSUMERS' GAS COMPANY OF TORONTO.

HEAD OFFICE, TORONTO.

Incorporated, 1848.

Authorized Capital, \$6,000,000; Issued, \$4,882,000.

President—A. W. Austin; Vice-President—Wellington Francis, K.C.

DIRECTORS.

A. H. Campbell.	John Hoskin, K.C., LL.D.,
Sir Wm. Mortimer Clark, K.C.,	D.C.L.
LL.D.	Herbert Langlois.
Thomas Long.	Sir Edmund B. Osler, M.P.
F. LeM. Grasset, M.D.	The Mayor.

General Manager—Arthur Hewitt; Secretary—John J. Armstrong.

Dates on which dividends are payable, 1st January, 1st April, 1st July and 1st October; Rate of last Dividend, 10 per cent. per annum.

THE CROWN TRUST COMPANY.

HEAD OFFICE MONTREAL.

Incorporated May, 1909; Paid-up Capital, \$500,000.

Toronto Correspondents—The Toronto General Trust Corporation.
 New York Correspondents—New York Trust Company.

President—Col. Wm. I. Gear; Vice-President and Managing Director—Maj.-Gen. John Carson; Vice-President—S. H. Ewing.

DIRECTORS.

Tancrede Bienvenu.	Maj.-Gen. E. W. Wilson.
W. W. Hutchison.	H. B. Henwood.
Thomas F. How.	Alex. MacLaurin.
John McKergow.	Brig.-Gen. F. S. Meighen.
Col. James G. Ross.	R. W. Reford.
B. B. Stevenson.	F. N. Southam.

Manager—Lt.-Col. Irving P. Rexford.

Dates on which Dividends are payable—January, April, July and October. Rate of last Dividend, 6 per cent.

CROW'S NEST PASS COAL COMPANY, LIMITED.

TORONTO.

Incorporated, 15th April, 1897; Capital Stock, \$6,212,666.66.

DIRECTORS.

President—Elias Rogers; Vice-President—E. C. Whitney; Treasurer—Elias Rogers; Secretary—R. M. Young; Assistant-Secretary—Miss L. M. Kelley.

Dates on which Dividends are payable, 31st March, 30th June, 30th September and 30th December. Rate of last Dividend, $1\frac{1}{2}$ per cent. each.

MISCELLANEOUS COMPANIES.

CROWN RESERVE MINING COMPANY, LIMITED.

MONTREAL.

Incorporated, January 16, 1907; Capital Stock, \$2,000,000.

DIRECTORS.

President—Maj. Gen. John W. Carson, C.B.; Vice-President—Col. W. I. Gear; Secretary-Treasurer—Lt.-Col. Jas. Cooper; General Manager—Sam'l. W. Cohen.

Rate of last Dividend, 5 per cent., paid January 15, 1917.

DOMINION BRIDGE COMPANY, LIMITED.

MONTREAL.

Incorporated, 30th July, 1912; Capital Stock, Issued, \$6,500,000.

President—Phelps Johnson; Vice-Presidents—G. H. Duggan, H. H. Vaughan, W. F. Angus; Secretary-Treasurer—R. M. Davy.

DIRECTORS.

W. F. Angus.	G. H. Duggan.
A. J. Brown, K.C.	Phelps Johnson.
Chas. Cassils.	J. M. McIntyre.
Norman J. Dawes.	J. K. L. Ross.
H. H. Vaughan.	F. L. Wanklyn.

Managing Director—G. H. Duggan.

Dates on which Dividends are payable, February, May, August and November. Rate of last Dividend, 2 per cent. Bonus, 2 per cent.

THE DOMINION IRON AND STEEL COMPANY.

HEAD OFFICE, SYDNEY, C.B.

Incorporated, 1899; Capital Stock—Common, \$20,000,000, exchanged for Dominion Steel Corporation Common; Preferred, \$5,000,000.

President—Mark Workman; Vice-President—Wm. McMaster; Secretary-Treasurer—C. S. Cameron; Assistant Secretary-Treasurer—W. A. Doig.

DIRECTORS.

Sir H. Montagu Allan.	J. H. Plummer.
Hector McInnes, K.C.	Sir Wm. Mackenzie.
E. R. Wood.	Hon. R. Mackay.
Geo. Caverhill.	W. G. Ross.
Hon. R. Dandurand.	Brig. Gen. Sir Henry M. Pellatt.
	Sir W. C. Van Horne.

Dates on which Dividends on Preferred Stock are payable, April and October.

DOMINION STEEL CORPORATION, LIMITED.

Incorporated, 1910; Capital Stock: \$7,000,000 Preferred, \$37,097,700 Common.

President—Mark Workman; Vice-Presidents—Wm. McMaster, Col. the Hon. Frederic Nicholls, Brig.-Gen. Sir Henry M. Pellatt; Secretary-Treasurer—C. S. Cameron; Assistant Secretary-Treasurer—W. A. Doig.

DIRECTORS.

Sir H. Montagu Allan.	Brig.-Gen. the Hon. Jas. Mason.
Geo. Caverhill.	Hector McInnes, K.C.
Hon. R. Dandurand.	J. H. Plummer.
Sir Wm. Mackenzie.	W. G. Ross.
	E. R. Wood.

Dates on which Dividends are payable, 1st February, May, August and November, 1½ per cent. each. Rate of last Dividend, 1 per cent.

MISCELLANEOUS COMPANIES.

DOMINION TELEGRAPH COMPANY

Incorporated, 1868; Capital Stock, \$1,000,000.

President—Sir Henry M. Pellatt; Vice-President—Aemilius Jarvis.

DIRECTORS.

Chas. O'Reilly, M.D.

Col. R. C. Clown.

Sir John M. Gibson.

C. N. Gallaher.

Frederic Roper.

G. W. E. Atkins.

Dates on which Dividends are payable 15th January, April, July and October. Rate of Dividend, $1\frac{1}{2}$ per cent. quarterly.

DOMINION TEXTILE COMPANY, LIMITED.

HEAD OFFICE, MONTREAL.

Date of Incorporation, January 4, 1905; Amount of Capital Stock, \$6,940,600.

President—C. B. Gordon; Vice-President—Sir H. S. Holt; Secretary-Treasurer—Jas. H. Webb.

DIRECTORS.

J. P. Black.

John Baillie.

J. G. Daniels.

C. R. Hosmer.

W. A. Black.

Dates on which Dividends are payable: Preferred, 15th January, April, July, October; Common, 2nd January, 1st April, 2nd July, 1st October. Rate of last Dividend, quarterly on Common.

LAKE OF THE WOODS MILLING COMPANY, LIMITED.

Date of Incorporation, June 1, 1903; Amount of Capital Stock, \$3,600,000.

President—F. S. Meighen; Vice-President—W. W. Hutchison; Secretary—F. E. Bray; Treasurer—T. F. McNally.

DIRECTORS.

Abner Kingman.

J. K. L. Ross.

John Carson.

R. M. Ballantyne.

T. Bienvenu.

Geo. V. Hastings.

LAURENTIDE POWER COMPANY, LIMITED.

GRAND'MERE, QUE.

Incorporated 15th October, 1915; Capital Stock, \$10,500,000.

President—J. E. Aldred; Vice-President—F. A. Sabbaton; Treasurer—Louis Armstrong; Secretary—Wm. F. Robinson.

DIRECTORS.

Geo. Chahoon, Jr.

Julian C. Smith.

C. R. Hosmer.

Howard Murray.

Edwin Hanson.

A. A. Tilney.

J. H. A. Acer.

LAURENTIDE COMPANY, LIMITED.

HEAD OFFICE, GRAND'MERE, QUE.

Incorporated 15th June, 1911; Capital Stock, \$9,600,000.

President—Geo. Chahoon, Jr.; Vice-President—Chas. R. Hosmer; Treasurer—Capt. J. H. A. Acer; Secretary—W. F. Robinson.

DIRECTORS.

Geo. Chahoon, jr.

J. K. L. Ross.

C. R. Hosmer.

F. A. Sabbaton.

R. B. Angus.

Edwin Hanson.

Sir Thos. Skinner (London).

Dates on which Dividends are payable—1st January, April, July and October. Rate of last Dividend, $2\frac{1}{2}$ per cent. quarterly.

MISCELLANEOUS COMPANIES.

THE LONDON AND CANADIAN LOAN AND AGENCY COMPANY, LIMITED.

HEAD OFFICE, TORONTO.

Incorporated, 15th October, 1863; Capital Stock, authorized \$2,000,000; Subscribed and fully paid, \$1,250,000.

President—Thos. Long; Vice-President—C. S. Gzowski; Manager—V. B. Wadsworth; Secretary—Wm. Wedd, Jr.

DIRECTORS.

Colin M. Black.	W. C. Noxon.
A. H. Campbell.	C. C. Dalton.
Goldwin L. Smith.	

Dates on which Dividends are payable, January, April, July and October. Rate of last Dividend, 8 per cent.

P. LYALL & SONS CONSTRUCTION COMPANY, LIMITED.

MONTREAL.

Incorporated, December 13, 1911; Capital Stock, \$3,050,000.

President—Wm. Lyall; Vice-President and Treasurer—T. O. Lyall; Secretary—Robt. Whyte.

DIRECTORS.

Wm. Lyall.	H. W. Beaucherk.
T. O. Lyall.	John McKergow.
J. N. Green Shields, K.C.	Hugh Mackay.

Dates on which Dividends are payable—1st February and 1st August.

MAPLE LEAF MILLING COMPANY, LIMITED.

Incorporated 16th March, 1910; Capital Stock, \$5,000,000.

President—Sir D. C. Cameron; Vice-President—Hedley Shaw.

DIRECTORS.

J. S. Barker.	W. E. Milner.
R. Cooper.	J. I. A. Hunt.
C. W. Baird.	

Dates on which Dividends are payable—18th January, March, April, July. Rate of last Dividend—Common, 10 per cent.; Preferred, 7 per cent.

MONTREAL LIGHT, HEAT AND POWER COMPANY, LIMITED

Controls Montreal Gas, Royal Electric, Montreal and St. Lawrence Light and Power Company, Imperial Electric, Lachine Rapids Hydraulic and Land, Citizens Light and Power, Standard Light and Power, Temple Electric, Consumers Gas of Montreal; Operates Provincial Light, Heat and Power, has exclusive rights to distribute Shawinigan Water and Power current on Island of Montreal and has large interest in Cedars Rapids Manufacturing and Power Company; considered franchises practically perpetual.

Common Stock, \$18,800,000 (Authorized \$22,000,000)

President—Sir H. S. Holt; Vice-President—Sir Rodolphe Forget; Secretary-Treasurer—C. S. Bagge.

DIRECTORS.

C. R. Hosmer.	Geo. Caverhill.
Sir H. Montagu Allan.	J. E. Aldred.
Hon. H. R. Rairville.	Hon. N. Peroteau.

Rate of Dividend on Common Stock, 8 per cent.

MISCELLANEOUS COMPANIES.

THE MONTREAL COTTONS, LIMITED.

Incorporated 1912; Capital Stock: Dominion Charter for \$10,000,000; subscribed, \$6,000,000.

S. H. Ewing, President; C. B. Gordon, Vice-President.
DIRECTORS.

A. Hamilton Gault.	Senator R. Dandurand.
W. C. Finley.	J. P. Black.
Sir H. S. Holt.	F. O. Lewis.
F. W. Molson.	

Dividends are paid quarterly, on the 15th March, 15th June, 15th September and 15th December. Rate of last Dividend, 4 per cent. on Common, 7 per cent. on Preferred.

THE OGILVIE FLOUR MILLS COMPANY, LIMITED.

HEAD OFFICE, MONTREAL.

Incorporated May, 1902. Capital Stock, \$4,500,000.

President—Charles R. Hosmer; Vice-President and Managing Director—W. A. Black; Treasurer—S. A. McMurtry; Secretary—G. Alfred Morris.

DIRECTORS.

Sir Montagu Allan, C.V.O.	Sir H. S. Holt.	Chas. Chaput.
Charles R. Hosmer.	W. A. Black.	A. M. Nanton.
Shirley Ogilvie.	C. B. Gordon.	Geo. E. Drummond.

Dividends on Preferred Stock, payable quarterly—1st September, 1st December, 1st March, and 1st June, at the rate of $1\frac{3}{4}$ per cent. quarterly.

Dividends on Common Stock, payable quarterly—1st October, 1st January, 1st April and 1st July, at the rate of $2\frac{1}{2}$ per cent. per annum. per annum.

PACIFIC-BURT COMPANY, LIMITED.

TORONTO.

Incorporated October 12, 1910; Capital Stock: Preferred, \$650,000; Common, \$650,000.

President—S. J. Moore; Vice-Presidents, F. N. Burt; H. T. Scott; Secretary—E. G. Baker; General Manager—Horace P. Brown.

DIRECTORS.

A. E. Ames.	Dr. Chas. W. Colby.
Jas. Ryrie	S. J. Moore, Jr.

Dates on which Dividends are payable—Preferred, 1st January, April, July and October, 7 per cent.; Common, 1st January and July, 2 per cent.

PENMANS, LIMITED.

PARIS, ONT., AND MONTREAL, QUE.

Incorporated, September 20, 1906; Capital Stock: Preferred, Authorized, \$1,500,000, Issued, \$1,075,000; Common, Authorized \$2,500,000, Issued \$2,150,000.

President—C. B. Gordon; Vice-President—R. B. Morrice; General Manager—I. Bonner; Secretary-Treasurer—C. B. Robinson.

DIRECTORS.

C. B. Gordon.	V. E. Mitchell, K.C.	Wm. McMaster.
R. B. Morrice.	J. R. Gordon.	John Baillie.
J. P. Black.	H. B. MacDougall.	Jas. N. Laing.

Dates on which Dividends are payable—Preferred, 1st February, May, August and November, $1\frac{1}{2}$ per cent.; Common, 15th February, May, August and November, 1 per cent., and 1 per cent. Bonus.

MISCELLANEOUS COMPANIES.

RIORDAN PULP & PAPER COMPANY, LIMITED.

MONTREAL.

Incorporated 1st May, 1912; Capital Stock: Common, Authorized-Issued, \$4,500,000; Preferred, Authorized, \$1,500,000, Issued \$1,000,000; Bonds Issued \$1,881,500.

President—Chas. Riordan; Vice-President—Carl Riordan; Secretary-Treasurer—F. B. Whittet.

DIRECTORS.

Chas. Riordan.	J. S. Douglas.
Carl Riordan.	C. E. Read.
S. B. Pemberton.	W. G. White.

Dates on which Dividends are payable—Preferred, March 31, June 30, September 30 and December 31, 7 per cent.; Common, 15th February, May, August and November, 1½ per cent.; Bonus, 1 per cent.

RUSSELL MOTOR CAR COMPANY, LIMITED.

TORONTO.

Incorporated September, 1899; Capital Stock \$1,000,000.

President—Lloyd Harris; Vice-President and General Manager—T. A. Russell; Assistant General Manager—C. R. Burt; Secretary—H. D. Scully.

DIRECTORS.

A. E. Ames.	E. B. Ryckman.	J. N. Shenstone.
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SHERWIN-WILLIAMS OF CANADA, LIMITED.

Incorporated June 8, 1911; Capital Stock \$8,000,000.

MONTREAL.

President—W. H. Cottingham; Vice-President—Lt.-Col. C. C. Balantyne; General Manager—H. M. Ashby; Secretary-Treasurer—J. H. Gordon.

DIRECTORS.

Wm. McMaster.	Geo. A. Martin.
W. J. Whyte, K.C.	H. M. Ashby.

J. W. McConnell.

Dates on which Dividends are payable—15th March, June, September and December. Rate of last Dividend, 7 per cent. on Preferred.

SHAWINIGAN WATER & POWER COMPANY.

MONTREAL; DEVELOPMENT, SHAWINIGAN FALLS, QUE.

Incorporated 1898; Capital Stock \$15,000,000.

President—J. E. Aldred; Vice-Presidents—Howard Murray and J. C. Smith; Treasurer—W. S. Hart; Secretary—Jas. Wilson; Thos. McDougall, Chairman of Board.

DIRECTORS.

R. W. Kelley, New York.	Julian C. Smith, Montreal.
Maurice J. Curran, Boston.	R. M. Atken, London, Eng.
J. E. Aldred, New York.	Sir M. Mitchell-Thomson, Bart., Edinburgh, Scot.
Howard Murray, Montreal.	Sir H. S. Holt, Montreal.
Thos. McDougall, Montreal.	E. R. Wood, Toronto.

Dates when Dividends are payable—10th January, April, July and October. Rate of last Dividend, 1¾ per cent.

MISCELLANEOUS COMPANIES.

THE STEEL COMPANY OF CANADA, LIMITED.

HAMILTON, ONT.

Incorporated June, 1910; Capital Stock: Preferred, \$6,496,300;
Ordinary \$11,500,000.

President—Robt. Hobson; Vice-President—Cyrus A. Birge; Secretary-
Treasurer—H. H. Champ; Assistant-Treasurer—H. S. Alexander;
Assistant Secretary—Corbett F. Whitton;
Chairman of Board—Chas. S. Wilcox;
General Manager—F. H. Whitton.

DIRECTORS.

Chas. Alexander.	W. D. Matthews.
A. J. Brown, K.C.	Hon. John Milne.
Lloyd Harris.	Sir Ed. B. Osler.

× Dates on which Dividends are payable—1st February, May, August
and November. Rate of last Dividend, 7 per cent. on
Preferred.

TOOKE BROS., LIMITED.

MONTREAL.

Incorporated 1911; Capital Stock: Preferred \$985,000, Common
\$650,000.

President—B. Tooke; Vice-President—W. A. Tooke; Secretary-
Treasurer—W. S. Barker; Managing Director—W. A. Brophey.

DIRECTORS.

B. Tooke.	F. C. Wolever.
W. A. Tooke.	M. A. Dawson.
W. S. Barker.	W. F. Heney.
W. A. Brophey.	A. B. Edgar.

A. J. Brown, K.C.

Dates on which Dividends are payable—March, June, September
and December. Rate of last Dividend, $1\frac{3}{4}$ per
cent. quarterly on Preferred only.

THE TORONTO GENERAL TRUSTS CORPORATION.

TORONTO, ONT., OTTAWA, ONT., WINNIPEG, MAN., SASKATOON, SASK.

Incorporated March 10, 1882; Capital Stock: Authorized, \$2,000,000;
Paid-up, \$1,250,000.

President—Hon. Feathersen Osler, K.C.; Vice-Presidents—Hamilton
Cassels, K.C., LL.D., Brig. Gen. Sir John M. Gibson,
K.C.M.G., LL.D.; Secretary—T. J. Maguire;
Assistant-Secretary—H. M. Forbes.

DIRECTORS.

W. R. Brock.	Hon. Peter McLaren.
Sir Wm. Mortimer Clark,	J. Bruce MacDonald.
K.C., LL.D.	Sir Edmund P. Osler, M.P.
Hon. W. C. Edwards.	J. G. Scott, K.C.
A. C. Hardy.	Lt.-Col. John F. Michie.
Dr. John Hoskin, K.C., LL.D.	E. C. Whitney.
W. D. Matthews.	Sir Edmund Walker, C.V.O.,
Lt.-Col. R. W. Leonard.	LL.D.
Thomas Long.	Hon. Sir D. H. McMillan,
	K.C.M.G.

J. W. Langmuir, General Manager; Wm. G. Watson, Assistant General
Manager.

Dates on which Dividends are payable—January, April, July and
October 1. Rate of last Dividend 10 per cent. per annum.

THE TORONTO MORTGAGE COMPANY.

TORONTO, ONT.

Incorporated 15th December, 1899; Capital Stock, \$724,550.

DIRECTORS.

President—Sir Wm. Mortimer Clark, LL.D., W.S., K.C.; Vice-President—Wellington Francis, K.C.; Manager—Walter Gillespie.

Dates on which Dividends are payable—2nd January, April, July and October. Rate of last Dividend, 8 per cent.

TORONTO PAPER MANUFACTURING COMPANY, LIMITED.

TORONTO.

Capital Stock \$750,000; Bonds issued \$500,000.

President—R. S. Waldie; Vice-President—W. J. Sheppard;

Secretary—A. W. Briggs.

DIRECTORS.

Wm. Briggs.

R. A. Lyon.

T. Albert Brown.

T. H. Watson.

TORONTO RAILWAY COMPANY.

Incorporated 1892; Capital Authorized, \$15,000,000; issued \$12,000,000.

President—Sir Wm. Mackenzie; Vice-President—Hon. F. Nicholls;
Secretary-Treasurer—J. C. Grace; General Manager—R. G. Fleming.

DIRECTORS.

Sir Wm. Mackenzie.

Sir H. M. Pellatt.

Hon. F. Nicholls.

Sir R. Forget.

E. R. Wood.

C. H. Smithers.

F. W. Ross.

Dates on which Dividends are payable, Jan., April, July and Oct.

TORONTO TERMINAL RAILWAY COMPANY.

TORONTO.

Incorporated July 13, 1906; Capital Stock \$2,000,000.

President—Howard G. Kelley; Vice-President—Geo. Bury; General
Manager—J. W. Leonard; Secretary—Henry Phillips;

Chief Engineer—J. R. W. Ambrose.

DIRECTORS.

E. W. Beatty, K.C.

E. J. Chamberlain.

Geo. Bury.

Howard G. Kelley.

I. G. Ogden.

J. E. Dalrymple.

THE TRUST AND LOAN COMPANY OF CANADA

Incorporated in Canada in 1843 under Canadian Act (17 Vic., c. 63) and Royal Charter of 1845, and now regulated by The Trust and Loan Company of Canada (Canadian) Act, 1910, and Royal Charter of 11th January, 1911 and (Canadian) Act, 1912.

AUTHORIZED SHARE CAPITAL - - £5,000,000

IN 250,000 SHARES OF £20 EACH

**Subscribed Capital £3,000,000, Paid-up £600,000, Statutory Reserve £423,757
Special Reserve £135,000**

DIRECTORS:

COL. THE HON. SIDNEY PEEL, President
SIR VINCENT CAILLARD, Vice-President
THE LORD STRATHEDEN AND CAMPBELL
FRED. W. STOBART, Esq. FREDERICK HENRY SCOTT, Esq.
J. H. NEWCOMBE, Esq. RUSSELL STEPHENSON, Esq.
COL. L. EDYE, Resident in Canada

ACTING SECRETARY:

R. KINGDON, Esq.

BANKERS:

In England—Messrs. GLYN, MILLS, CURRIE & CO.
In Canada—BANK OF MONTREAL. UNION BANK OF CANADA

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**AN ACT RESPECTING
BANKS AND BANKING**

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HEAD OFFICE, HAMILTON

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INCORPORATED 1869

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3-4 GEORGE V.

CHAP. 9.

AN ACT RESPECTING BANKS AND BANKING

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

1. Short Title.— This Act may be cited as the Bank Act. 53 V., c. 31, s. 1.

For review of previous banking legislation, see Falconbridge on Banking and Bills of Exchange, chap. I.

(1) *Cushing vs. Dupuy*, L. R., 5 A. C. 409 (1880).

The British North America Act of 1867, s. 91, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency intended to confer and did confer on it legislative power to interfere with property, civil rights and procedure within the Provinces, so far as these latter might be affected by a general law relating to those subjects. Consequently the Dominion enactment, 40 V., ch. 41, s. 28, amending the Canadian Insolvent Act, and providing that the judgment of the Court of Appeal in matters of insolvency should be final, *i.e.*, not subject to the appeal as of right to His Majesty in Council allowed by the Civil Procedure Code, Article 1178, is within the competence of the Canadian Parliament, and does not infringe the exclusive powers given to the Provincial legislatures by sec. 92 of the Imperial Statute. Neither does it infringe the Queen's prerogative, for it only limits the right of appeal as given by the Code.

(2) *Merchants' Bank vs. Smith* (1883), 8 S. C. R. 512.

Sections 46, 47 and 48 of 34 V., ch. 5 (D), are *intra vires* of the Dominion Parliament.

(3) *Quirt vs. The Queen* (1891), 19 S. C. R. 510.

In 1886 the Bank of Upper Canada became insolvent, and assigned all its property and assets to trustees. By 31 V., c. 17, the Dominion Parliament incorporated the said trustees, giving them authority to carry on the business of the bank so far as was necessary for winding up the same. By 33 V., c. 40, all the property of the bank vested in the trustees was transferred to the Dominion Government, who became seized of all the powers of the trustees.

Held, that these acts were *intra vires* of the Dominion Parliament.

The authority to pass the said acts cannot be referred to the legislative jurisdiction of Parliament over "banking and the incorporation of banks," but to that over "bankruptcy and insolvency" only.

(4) *Tennant vs. Union Bank of Canada* (1894), A. C. 31.

The words "Banking, Incorporation of Banks and the Issue of Paper Money" in section 91 of the British North America Act, 1867,

cover the case of warehouse receipts taken as security by a bank in the course of the business of banking. Notwithstanding section 92 of the same Act, the Dominion Parliament has power to legislate with respect to such securities, though with the effect of modifying the law of the Province in relation thereof, *e.g.*, the provisions of sec. 88 of the Bank Act.

(5) *Bank of Toronto vs. Lambe* (1887), 12 App. Cas. 575.

A provincial legislature may impose a tax upon banks which carry on business within the province, varying in amount with their paid-up capital and with the number of their offices, whether their chief place of business is within the province or not.

(6) *Windsor vs. Commercial Bank* (1882), 3 Cart. 377, 3 Russ. and Geld. 420.

A provincial legislature may impose a tax on the Dominion notes held by a bank in the province as part of its cash reserve under sec. 60.

INTERPRETATION.

2. Definitions.— In this Act, unless the context otherwise requires,—

(a) **"Association."**—"Association" means the Canadian Bankers' Association, incorporated by chapter 93 of the statutes of 1900, intituled an Act to incorporate the Canadian Bankers' Association;

(b) **"Bank."**—"Bank" means any bank to which this Act applies;

(c) **"Bill of Lading."**—"Bill of lading" includes all receipts for goods, wares or merchandise, accompanied by an undertaking to transport the same from the place where they were received to some other place, by any mode of carriage whatever, whether by land or water, or partly by land and partly by water;

(d) **"Circulation Fund."**—"Circulation Fund" means the fund heretofore established and continued by the authority of this Act under the name of the Bank Circulation Redemption Fund;

(e) **"Curator."**—"Curator" means any person appointed under the authority of this Act by the Canadian Bankers' Association to supervise the affairs of any bank which has suspended payment in specie or Dominion notes of any of its liabilities as they accrue;

(f) **"Farmer."**—"Farmer" includes the owner, occupier, landlord and tenant of a farm;

(g) **"Goods, Wares and Merchandise."**—"Goods, wares and merchandise" includes in addition to the things usually understood thereby, products of agriculture, products of the forest, products of the quarry and mine, products of the sea, lakes and rivers, petroleum and crude oil, and other articles of commerce;

(h) "**Grain**" means wheat, oats, barley, rye and flax;

(i) "**Manufacturer.**"—"Manufacturer" includes manufacturers of logs, timber or lumber, maltsters, distillers, brewers, refiners and producers of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetables, and any person who produces by hand, art, process or mechanical means any goods, wares or merchandise;

(j) "**Minister.**"—"Minister" means the Minister of Finance and Receiver General;

(k) "**President.**"—"President" does not include an honorary president;

(l) "**Products of Agriculture.**"—"Products of agriculture," in addition to the direct products of the soil such as hay, grain, roots, vegetables, fruits, and other crops, includes milk, cream, butter, cheese, honey, poultry (dead), and eggs, hides, skins and wool, and dried, canned and preserved vegetables and fruits;

(m) "**Products of the Forest.**"—"Products of * * * * the forest" includes bark, logs, spars, railway ties, poles and other timber, shingles, laths, deal, boards, staves and other lumber, and the skins and furs of wild animals;

(n) "**Products of the Sea, Lakes and Rivers.**"—"Products of * * * * the sea, lakes and rivers" includes, in addition to fish of all kinds, whether fresh, frozen, salted, dried, canned, preserved in oil, or otherwise preserved, whales and seals, their oil, skins and bone, oysters, lobsters and other crustaceans, fresh and canned or otherwise preserved;

(o) "**Trustees.**"—"Trustees" means the persons appointed by the Association and by the Minister to receive and hold the central gold reserves, and "trustee" means any one of the trustees, and if one or more of the trustees is a corporation then "trustee" includes each of the officers of such corporation who is responsible for any action taken by the corporation for the purposes of this Act.

(p) "**Warehouse Receipt.**"—"Warehouse receipt"—

(i) means any receipt given by any person for any goods, wares or merchandise in his actual, visible and continued possession as bailee thereof in good faith and not as of his own property, and

(ii) includes receipts, given by any person who is the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods, wares or merchandise, for goods, wares and merchandise delivered to him as bailee, and actually in the place or in one or more of the places owned or kept by him, whether such person is engaged in other business or not, and

(iii) includes also receipts given by any person in charge of logs or timber in transit from timber limits or other lands to the place of destination of such logs or timber.

2. **Public Notice, how Given.**—Where by this Act any public notice is required to be given the notice shall, unless otherwise specified, be given by advertisement—

(a) in one or more newspapers published at the place where the chief office of the bank is situate; and,

(b) in *The Canada Gazette*. 53 V., c. 31, ss. 2, 54 and 102; 63-64 V., c. 26, ss. 3 and 24; 4-5 E. VII., c. 4, s. 4.

3. **Sufficiency of Publication.**—When by this Act a notice is required to be published in a newspaper for four weeks or any longer period, publication each week in a weekly newspaper, or once a week during the period in a newspaper published more frequently, shall be a sufficient publication for the purposes of this Act.

4. **Notice of Call.**—When by this Act notice of any call is required to be given to the shareholders the notice shall, unless otherwise specified, be sufficiently given by mailing the notice in the post office, registered and post paid, to the last known post office address of the respective shareholders as shown by the records of the bank, at least thirty days prior to the day on which the call is payable. 53 V., c. 31, ss. 2, 54 and 102; 63-64 V., c. 26, ss. 3 and 24; 4-5 E. VII., c. 4, s. 4. Am.

BANK.—The banks to which this act applies are specified in secs. 3, 4, 5 and 6. By sec. 156, every person assuming or using the title "bank," "banking company," etc., without being authorized so to do by this Act, or by some other act in force in that behalf, is guilty of an offence against this act.

As to what is a bank in regard to its business and powers, see notes to sec. 76.

A bank for the purpose of the Bills of Exchange Act means an incorporated bank or savings bank carrying on business in Canada (see sec. 2 (c) of that act, *infra*.)

"**MINISTER.**"—The Minister of Finance and Receiver-General is frequently referred to in the act. He is also chairman of the Treasury Board, which exercises important functions under the act. See secs. 15 to 17, 33, 35, 67, 68 and 127. By the act respecting the Department of Finance and the Treasury Board. The Board consists of the Minister of Finance and Receiver General and any five of the ministers belonging to the King's Privy Council for Canada, to be nominated from time to time by the Governor in Council; the Board acts as a committee of the Privy Council on all matters relating to finance, revenue and expenditure, or public accounts, which are referred to it by the Council, or to which the Board thinks it necessary to call the attention of the Council, and has power to require from any public department, board or officer, or other person or party bound by law to furnish the same to the government, any account, return, statement, document or information which the Board deems requisite for the due performance of its duties.

"CURATOR."—See sec. 117.

"CIRCULATION FUND."—See sec. 64, *infra*.

"GOODS, WARES AND MERCHANDISE." See notes to sec. 76. This expression is used also in secs. 86 to 91.

"WAREHOUSE RECEIPT."—

"BILL OF LADING."—A warehouse receipt is in some respects like a bill of lading. Each is a receipt or acknowledgment that the goods of one person have been received by another, but the legal effects of these documents at common law were very different. A bill of lading, being an acknowledgment by a carrier that goods had been received for carriage, was an instrument well known to commerce, and by the custom of merchants peculiar incidents were attached to it, the most important of which was that upon its transfer the property in the goods mentioned in it passed to the transferee. A warehouse receipt on the contrary has not by custom any peculiar incidents attached to it, and its mere transfer did not pass to the transferee the property in the goods (*Bank of British North America v. Clarkson*, 1869, 19 C. P. at p. 168).

BILLS OF LADING ACT AND FACTORS' ACTS.—In England the Bills of Lading Act and the Factors' Acts have largely extended the effect of bills of lading, and the rights of the holders of them. The former act confers upon the consignee of goods named in a bill of lading, and an endorsee of a bill of lading, to whom the property in the goods pass upon, or by reason of such consignment or endorsement the same rights of suit, and subjects him to the same liability as if the contract contained in the bill of lading had been made with himself. The latter acts are intended to afford security to persons dealing with factors or agents entrusted with the possession of goods, or of the documents of title to goods. These or similar acts are in force in various parts of Canada. Cf., R. S. C., c. 118.

COLLATERAL SECURITY.—The Bank Act does, however, deal with the subject of warehouse receipts and bills of lading (as defined in this section) to the extent of giving the banker special privileges in regard to taking such documents as collateral security. See sec. 86 et seq.

BILL OF LADING NOT A NEGOTIABLE INSTRUMENT.—A bill of lading is not negotiable in the special sense that a bill of exchange may be negotiable. The mere honest possession of a bill of lading endorsed in blank, or upon which the goods are made deliverable to bearer, is not such a title to the goods as the like possession of a bill of exchange would be to the money promised to be paid by the acceptor. *The endorsement of a bill of lading gives no better right to the goods than the endorser himself had* (except in cases where an agent entrusted with it may transfer it to a *bona fide* holder under the Factors' Acts), so that if the owner should lose or have stolen from him a bill of lading endorsed in blank, the finder or the thief could confer no title upon an innocent third person. But the title of *bona fide* third persons will prevail against the seller who has actually transferred the bill of lading to the buyer, although he may have been induced by the buyer's fraud to do so, because a transfer obtained by fraud is only voidable, not void. *Benjamin on Sales*, 5th ed. 1906, p. 919. *Pollard v. Vinton*, 1881, 195 U. S. at p. 8.

APPLICATION.

General.

3. To what Banks this Act Applies.—The provisions of this Act apply to the several banks enumerated in Schedule A to this

Act, and to every bank incorporated after the first day of January, one thousand nine hundred and twelve, whether this Act is specially mentioned in its Act of Incorporation or not, but not to any other bank, except as hereinafter specially provided. 53 V., c. 31, s. 3 Am.

Effect of war on enemy banks; 23 D. L. R. 375, 379.

How affected by moratorium: 22 D. L. R. 865.

4. Bank Charters Continued to July 1st, 1923, as to some Particulars.—The charters or Acts of Incorporation, and any Acts in amendment thereof, of the several banks enumerated in Schedule A to this Act are continued in force until the first day of July, one thousand nine hundred and twenty-three, so far as regards, as to each of such banks,—

(a) the incorporation and corporate name;

(b) the amount of the authorized capital stock, if the same has not been increased or decreased, but if increased or decreased then as increased or decreased before the passing of this Act;

(c) the amount of each share of such stock; and,

(d) the chief office;

subject to the right of each of such banks to increase or to reduce its authorized capital stock in the manner hereinafter provided.

2. As to other Particulars.—As to all other particulars this Act shall form and be the charter of each of the said banks until the first day of July, one thousand nine hundred and twenty-three.

3. Forfeited or Void Charters not Continued.—Nothing in this section shall be deemed to continue in force any charter or Act of Incorporation, if, or in so far as it is, under the terms thereof, or under the terms of this Act or of any other Act passed or to be passed, forfeited or rendered void by reason of the non-performance of the conditions of such charter or Act of Incorporation, or by reason of insolvency, or for any other reason. 63-64 V., c. 26, s. 6. Am.

Lapierre vs. Banque de St. Jean, 12 Q. P. R. 169.

Art. 978 C. P. confers no obligation upon the attorney-general of Canada to take proceedings to cancel the charter of a bank, when required to do so by a shareholder.

Banks in course of winding up.

5. Act Continues to apply for Purposes of Winding Up.—The provisions of this Act shall continue to apply to the banks named in the Schedule to chapter 5 of the statutes of 1912, intituled The Bank Charters Continuation Act, 1912, and not named in Schedule A to this Act, but only in so far as may be necessary to wind up the business of the said banks respectively;

and the charters or Acts of Incorporation of the said banks, and any Acts in amendment thereof, or any Acts in relation to the said banks now in force, shall respectively continue in force for the purposes of winding up, and for such purposes only. 63-64 V., c. 26, s. 5, Am.

The Bank of British North America.

6. Sections Applicable to Bank of British North America.

—The sections of this Act which apply to the Bank of British North America are sections,—

1; 2; 6; 7; 39; 45; 54 to 61, both inclusive; 63 to 124, both inclusive; 130 to 160, both inclusive.

2. Sections not Applicable.—The other sections of this Act do not apply to the Bank of British North America. 53 V., c. 31, s. 6; 63-64 V., c. 26, s. 7. Am.

7. Chief Office at Montreal.—For the purposes of the several sections of this Act made applicable to the Bank of British North America, the chief office of the Bank of British North America shall be the office of the bank at Montreal in the province of Quebec. 53 V., c. 31, s. 7.

The Bank of British North America was incorporated by royal charter, and has a corporate existence independently of the Act. Its head office is situated in London, Eng. The bank is subject to the Act to the extent specified in sec. 3.

8. Particulars of Act of Incorporation.—The capital stock of every bank hereafter incorporated, the name of the bank, the place where its chief office is to be situated, and the name of the provisional directors, shall be declared in the Act of Incorporation of every such bank respectively. 53 V., c. 31, s. 9.

9. Form thereof.—An Act of incorporation of a bank in the form set forth in Schedule B to this Act shall be construed to confer upon the bank thereby incorporated all the powers, privileges and immunities, and to subject it to all the liabilities and provisions set forth in this Act. 53 V., c. 31, s. 9.

10. Capital Stock and Shares.—The capital stock of any bank hereafter incorporated shall be not less than five hundred thousand dollars, and shall be divided into shares of one hundred dollars each. 53 V., c. 31, s. 10.

11. Provisional Directors.—The number of provisional directors shall be not less than five.

2. Tenure of Office.—The provisional directors shall hold office until directors are elected by the subscribers to the stock, as hereinafter provided. 53 V., c. 31, s. 11; 4-5 E. VII., c. 4, s. 1.

"As hereinafter provided," see sec. 13.

12. Opening of Stock Books.—For the purpose of organizing the bank, the provisional directors may, after giving ten days' public notice thereof, cause stock books to be opened, in which shall be recorded the subscriptions of such persons as desire to become shareholders in the bank.

2. Where.—The stock books shall be opened at the place where the chief office of the bank is to be situate, and elsewhere in the discretion of the provisional directors.

3. Particulars Entered.—Each subscriber shall, at the time of subscription, give his post office address, and description, and these particulars shall appear in the stock books in connection with the name of the subscriber and the number of shares subscribed for.

4. Notice of Double Liability.—There shall be printed in small pica type, or type of larger size, on each page in the stock books upon which subscriptions are recorded, and on every document constituting or authorizing a subscription, on a part of the page and document, respectively, which may be readily seen by the person recording the subscription, or by the person signing the document, a copy of section 125 of this Act.

5. Time Stock Books Open.—The stock books may be kept open for such time as the provisional directors deem necessary.

6. Recovery of Unpaid Subscriptions.—In case of the non-payment of any instalment or other sum payable by a subscriber on account of his subscription, the provisional directors may, in the corporate name of the bank, sue for, recover, collect and get in any such instalment or sum. 53 V., c. 31, s. 12. Am.

POWERS OF PROVISIONAL DIRECTORS—The powers of the provisional directors seem to be limited to the organization of the bank, and, for that purpose, to the opening of stock books and the obtaining of subscriptions and payments thereon sufficient to comply with sec. 13, and then under the last mentioned section the calling of a meeting of subscribers to supplant them by the election of directors from among the subscribers, which the provisional directors themselves may never be. (*In re North Simcoe Railway Co. v. Toronto*, 1874, 36 U. C. R. at p. 119). They are merely trustees to start, as it were, the ordinary legal machinery into motion. Upon the meeting of the subscribers and the election of directors, the whole object of the appointment of provisional directors is satisfied, and their authority ceases. (*Michie v. Erie & Huron*, 1876, 26 C. P. at p. 574, Cf. *Monarch Life v. Brophy*, 1907, 14 O. L. R. 1, 12).

The prohibition of section 14 against the bank's commencing the business of banking is not intended to prevent calls being made on stock subscribed for, or to prevent the board of provisional directors from doing any acts for and in the name of the bank within the power of directors, so long as such acts fall short of what might properly be termed "commencing operations." (*North Sydney v. Greener*, 1898, 31 N. S. R. 41).

Sovereign Bank v. McIntyre, 44 Can. S. C. R. 157.

M. was sued by a bank on a note alleged to have been given in

payment or a portion of an issue of increased stock. He pleaded no consideration and non-receipt of the stock. There was evidence that there was no resolution allotting the stock. It was held that the onus was on M. to prove that the stock was issued to the public without authority and such onus was not satisfied. (*Idington and Duff, J.J., Diss.*)

Re Monarch Bank of Canada, 22 O. L. R. 516; 17 O. W. R. 904. (Leave to appeal was later granted).

Provisional directors, who were given no special powers by the Act of Incorporation, authorized payment out of bank's funds of commissions to persons who secured subscriptions for shares of the bank's stock. It was held that the provisional directors were entirely governed by the Bank Act, and upon the winding up of the Bank were properly found liable, upon the ground of breach of trust or misfeasance, to pay to the liquidator the sums which had improperly been paid under their authority. See also *Re Ontario Bank*; *Barwick's case*, 24 O. L. R. 301 (C. A.) *re* purchase of shares held illegally by bank in name of guarantee fund.

13. First Meeting of Subscribers.—Whenever a sum not less than five hundred thousand dollars of the capital stock of the bank has been *bona fide* subscribed, and payments, in money on account thereof have been made by the subscribers, the total of such payments making a sum not less than two hundred and fifty thousand dollars, and as soon thereafter as the provisional directors have paid thereout to the Minister the sum of two hundred and fifty thousand dollars, the provisional directors may, by public notice published for at least four weeks, call a meeting of the subscribers to the said stock, to be held in the place named in the Act of incorporation as the chief office of the bank, at such time and at such place as is set forth in the said notice.

2. What is a bona fide Subscription.—For the purposes of the foregoing subsection no subscription shall be deemed to have been made *bona fide* or be complete unless and until payment in money equal to at least ten per cent. of the amount subscribed has been made on account of such subscription by the subscriber, and such payment, with the date thereof, shall be entered on the stock books opposite to such subscription.

3. Business at Meeting.—The subscribers shall, at such meeting,—

(a) determine the day upon which the annual general meeting of the bank is to be held;

(b) elect such number of directors, duly qualified under this Act, not less than five, as they think necessary; and

(c) provide for the method of filling vacancies in the board of directors until the annual general meeting.

4. Tenure of Directors.—Such directors shall hold office until the annual general meeting next succeeding their election.

5. Provisional Directors Cease.—Upon the election of direc-

tors as aforesaid the functions of the provisional directors shall cease. 53 V., c. 31, s. 13; 4-5 E. VII., c. 4, s. 2, Am.

PREREQUISITES TO COMMENCEMENT OF BUSINESS.—The requirements to be satisfied before a new bank commences business as provided by this and the next following three sections are, briefly, the following:

1. *Bona fide* subscriptions of \$500,000 and payment on account thereof to the Minister of Finance of £250,000 (sec. 13).

Rc Central Bank, E'S. P. Bark (1890) C. L. T. 343.

Promissory note given by subscriber for bank shares, for the 10 per cent., required by the Bank Act to be paid in money, is not a compliance with the statute, and such a subscriber does not validly acquire any shares and therefore is not liable as contributory in winding up proceedings.

2. Calling of meeting of subscribers by the provisional directors and election of directors (sec. 13).

3. Obtaining of certificate from the Treasury Board within one year from the passing of the Act of Incorporation (secs. 14 and 16.)

Upon the issue of the Treasury Board's certificate, the Minister of Finance is required to pay to the bank without interest the amount deposited with him, after deducting therefrom \$5,000 for the purposes of the Bank Circulation Redemption Fund under section 64. In the event of no certificate being issued within the year, the Minister is required to repay the amount deposited to the person depositing the same, and the charter of the bank lapses.

The "public notice" required is prescribed by sec. 2, sub-sec. 2.

14. Permission to Commence Business.—The bank shall not issue notes or commence the business of banking until it has obtained from the Treasury Board a certificate permitting it to do so.

2. No Certificate Until Directors Elected.—No application for such certificate shall be made until directors have been elected by the subscribers to the stock in the manner hereinbefore required. 53 V., c. 31, s. 14.

See notes to section 13.

Sec. 132 makes it an offence against this Act to issue notes or commence business before the obtaining of the certificate.

Sec. 15 prescribes the conditions to be performed before the certificate of the Treasury Board may be given.

"Commence the business of banking." refers to the transaction of business with the public as distinguished from dealings connected with subscriptions for stock. (Cf. *North Sydney v. Greener*, referred to in the notes to sec. 12).

15. Statement of Payments by Provisional Directors.—At the time of the application for the certificate, there shall be submitted to the Treasury Board a sworn statement setting forth the several sums of money paid in connection with the incorporation and organization of the bank, and such statement shall, in addition, include a list of all the unpaid liabilities, if any, in connection with or arising out of such incorporation and organization.

2. **To what Limited.**—Prior to the time at which the certificate is given no payments on account of incorporation and organization expenses shall be made out of moneys paid in by subscribers except reasonable sums for the payment of clerical assistance, legal services, office rental, advertising, stationery, postage and expenses of travel, if any.

3. **When Certificate may be Granted.**—No certificate shall be given by the Treasury Board until it has been shown to the satisfaction of the Board, by affidavit or otherwise, that all the requirements of this Act and of the special Act of Incorporation of the bank, as to the subscriptions to the capital stock, the payment of money by subscribers on account of their subscriptions, the payment required to be made to the Minister, the election of directors, deposit for security of note issue, or other preliminaries, have been complied with, and that the sum so paid is then held by the Minister, and unless it appears to the Board that the expenses of incorporation and organization are reasonable.

4. **Within One Year.**—No such certificate shall be given except within one year from the passing of the Act of Incorporation of the bank applying for the said certificate. 53 V., c. 31, s. 15, Am.

16. **If Certificate not Granted, Powers to Cease.**—If the bank does not obtain a certificate from the Treasury Board within one year from the time of the passing of its Act of Incorporation, all the rights, powers and privileges conferred on the bank by its Act of Incorporation shall thereupon cease and determine, and be of no force or effect whatever.

2. **Ordinary Disbursements Allowed, but other Expenses Subject to Resolution.**—If stock books have been opened and subscriptions in whole or in part paid, but no certificate from the Treasury Board obtained within the time limited by the preceding subsection, no part of the money so paid, or accrued interest thereon, shall be disbursed for commissions, salaries, charges for services or for other purposes, except a reasonable amount for payment of clerical assistance, legal services, office rental, advertising, stationery, postage and expenses of travel, if any, unless it is so provided by resolution of the subscribers at a meeting convened after notice, at which the greater part of the money so paid is represented by subscribers or by proxies of subscribers; and each subscriber shall be entitled at such meeting to one vote for each ten dollars paid on account of his subscription.

3. **Application to Court to Settle Amount of Disbursements.**—If the amount allowed by such resolution for commissions, salaries or charges for services be deemed insufficient by the provisional directors, or directors elected under section 13 of

this Act, as the case may be, or if no resolution for such purpose be passed after a meeting has been duly called, then the provisional directors, or directors elected as aforesaid, may apply to a judge of any superior or county court having jurisdiction where the chief office of the bank is fixed by its Act of Incorporation, to settle and determine all charges and the reasonableness of the amount of the disbursements already made to which such money and interest, if any, shall be subject before distribution of the balance to the subscribers.

4. Notice of Meeting and Application to Court, with Statement.—Notice of the meeting and notice of the application respectively referred to in the next preceding subsections shall be given by mailing the notice in the post office, registered and post paid, at least twenty-one days prior to the date fixed for such meeting or the hearing of such application, to the several subscribers to their respective post office addresses as contained in the stock books; and each of such notices shall contain a statement in summary form, of the several amounts for commissions, salaries, charges for services and disbursements which it is proposed shall be provided by resolution for payment, or settled and determined by a judge, as the case may be.

5. Voting.—Votes of subscribers may be given at such meeting by proxy, the holder of such proxy to be a subscriber, and subscribers may be heard either in person or by counsel on such application.

6. Ratio Payable by Subscribers.—In order that the sums paid and payable under the provisions of this section may be equitably borne by the subscribers, the provisional directors or the directors, as the case may be, shall, after the amount of such sums is ascertained as herein provided, fix the proportionate part thereof chargeable to each subscriber at the ratio of the number of shares, in respect of which he is a subscriber to the total number of shares *bona fide* subscribed.

7. Payment of Excess.—The respective amounts so fixed shall, before return of the sums paid in to the subscriber, be deducted therefrom, and if the respective sums paid in are not as much as the amounts so fixed, then the excess in each case shall be payable forthwith by the subscriber to the provisional directors or the directors, as the case may be.

8. Deductions.—The total of the amounts in excess mentioned in the next preceding sub-section which the provisional directors or the directors are unable to get in or collect in what seems to them a reasonable time shall, with any legal costs incurred, be deducted by them from the sums then remaining in their hands to the credit of the several subscribers in the ratio here-

inbefore mentioned. the shares in respect of which no such collections have been made being eliminated from the basis of calculation.

9. **Returns of Excess to Subscribers.**—The provisional directors or directors, after payment by them of the sums payable under this section, shall return to the subscribers, with any interim interest accretions, the respective balances of the moneys paid in by the subscribers. 53 V., c. 31, s. 16. Am.

17. **Deposit, how Disposed of if Certificate Granted.**—Upon the issue of the certificate in manner hereinbefore provided, the Minister shall forthwith pay to the bank the amount of money so deposited with him as aforesaid, without interest, after deducting therefrom the sum of five thousand dollars required to be deposited under the provisions of this Act for the securing of the notes issued by the bank.

2. **If Certificate not Granted.**—In case no certificate is issued by the Treasury Board within the time limited for the issue thereof, the amount so deposited shall be returned to the bank for distribution in the manner provided by this Act.

3. **Minister not Bound.**—In no case shall the Minister be under any obligation to see the proper application in any way of the amount so returned. 53 V., c. 31, s. 17, Am. See sec. 13 and notes. See sec. 64.

INTERNAL REGULATIONS.

18. **Regulation by By-Law.**—The shareholders of the bank may, at any annual general meeting or at any special general meeting duly called for the purpose, regulate, by by-law, the following matters incident to the management and administration of the affairs of the bank, that is to say:—

(a) The day upon which the annual general meeting of the shareholders for the election of directors shall be held;

(b) The record to be kept of proxies, and the time, not exceeding twenty days, within which proxies must be produced and recorded prior to a meeting in order to entitle the holder to vote thereon;

(c) The number of the directors, which shall be not less than five, and the quorum thereof, which shall be not less than three;

(d) Subject to the provisions hereinafter contained, the qualifications of directors;

(e) The method of filling vacancies in the board of directors, whenever the same occur during each year;

(f) The time and proceedings for the election of directors in case of a failure of any election on the day appointed for it;

(g) The remuneration of the president, vice-president and other directors; and,

(h) The amount of discounts or loans which may be made to directors, either jointly or severally, or to any one firm or person, or to any shareholder, or to corporations.

2. Copy of By-Laws to be Sent to Shareholders.—A copy of the by-laws in force on the first day of July, one thousand nine hundred and thirteen, in respect of the several matters hereinbefore in this section set out, together with a copy of this section of the Act, shall, before the thirty-first day of December, one thousand nine hundred and thirteen, be sent to each shareholder at his last known post office address, as shown by the books of the bank; and after the first day of July, one thousand nine hundred and thirteen, within six months after the end of each successive five year period, a copy of the by-laws, in respect of the said matters, in force at the end of each such period, shall be sent as aforesaid.

3. Guarantee and Pension Funds.—The shareholders may authorize the directors to establish guarantee and pension funds for the officers and employees of the bank and their families, and to contribute thereto out of the funds of the bank.

Re Ontario Bank Pension Fund, 5 O. W. N. 134; 25 O. W. R. 99. Insolvency; winding-up; pension fund; inchoate scheme; claim on assets of bank.

Re Ontario Bank Pension Fund, 19 D. L. R. 512, 30 O. L. R. 350. Where a by-law passed by bank shareholders, at an annual meeting authorized the directors to establish a pension fund for the officers and employees, and empowered the directors to contribute thereto, the opening of an account in the bank's books under the name of "Officers' Pension Fund" and the transfer to its credit from profit and loss account of various sums annually, will not, on the bank's failure, constitute a trust for the amounts in favour of the proposed beneficiaries, where the same by-law further authorized the directors to pass rules for the organization and regulation of a pension fund, the contributions thereto by officers and employees and the settling of the scheme of benefits, where in fact no such rules were formulated nor were any contributions made by officers or employees. (*Sinnett v. Hebert*, L. R. 12 Eq. 201; *Re Gossiot*, 30 L. J. Ch. 242, and *Re Gosling* [1900], W. N. 15, 48 W. R. 300, referred to).

4. Existing By-Laws Continued—Exception.—Until it is otherwise prescribed by by-law under this section, the by-laws of the bank on any matter which may be regulated by by-law under this section shall remain in force, except as to any provision fixing the qualification of directors at an amount less than that prescribed by this Act. 53 V., c. 31, s. 18; 4-5 E. VII., c. 4, s. 3.

As to qualification of directors, the section is subject to sec. 20. V., c. 31, s. 18; 4-5 E. VII., c. 4, s. 3.

The shareholders meet and vote at the annual general meetings of the bank (the first of such meetings being held at a time appoint-

ed under sec. 13 and subsequent ones being regulated by by-law under sec. 18, and at special general meetings called by virtue of sec. 31. Sec. 32 regulates the voting at any shareholders' meetings. Although the shareholders may name the *day* of the annual meeting, the *hour* of the day is appointed by the directors, the place of meeting must be the head office of the bank and public notice must be given (sec. 21). It is advisable that the by-law appointing a day for the election of directors (sec. 18) should also provide for the possible failure of the election on that day, as by sec. 27 the election may take place on any other day appointed by by-law of the shareholders. A meeting held on the day first appointed could no doubt be legally adjourned to another named day, so as to allow of the election of directors. (*Reg. v. Wimbledon*, 8 Q. B. D. at p. 463). Failing an adjournment, a special general meeting of the shareholders would have to be called.

As to the general meetings of the shareholders, c.f. secs. 21, 22, 23 and 31.

As to proxies, cf. sec. 32.

As to qualification of directors, the section is subject to sec. 20.

As to filling of vacancies during the year, cf. sec. 25.

In case of failure to elect directors, the old directors continue in office until a new election is made: see sec. 27.

The aggregate amount of loans to directors and firms of which they are partners must be shown in the monthly return, schedule D. See sec. 112.

For other powers expressly conferred upon the shareholders by the Act. See secs 31 (4), 33, 35, 55, 101 and 103.

19. Board of Directors.—The stock, property, affairs and concerns of the bank shall be managed by a board of directors, who shall be elected annually in manner hereinafter provided, and shall be eligible for re-election. 53 V., c. 31, s. 19.

The number of directors is to be not less than five and their quorum not less than three, but otherwise their number and quorum are subject to regulation by the shareholders. (Sec. 18.) Cf. notes to sec. 12.

See also the following sections relating to directors.

20. Qualification.

21-27. Election.

28. Meetings.

29-30. General Powers.

DUTIES AND LIABILITIES OF DIRECTORS.—At every annual meeting of the shareholders it is the duty of the outgoing directors to submit a clear and full statement of the affairs of the bank, containing the particulars required by sec. 54 and any additional statements which may be lawfully required by the shareholders under sec. 55.

The directors are responsible for knowingly and wilfully concurring in declaring any dividend or bonus so as to impair the paid-up capital. (Sec 58.)

A director is liable criminally if he pledges, assigns or hypothecates notes of the bank (sec. 139), if he refuses to make calls on the double liability of the shareholders after the expiration of three months from the insolvency of the bank (sec. 154), if he wilfully

gives or concurs in giving any creditor of the bank any fraudulent, undue or unfair preference over other creditors (sec. 155), or if he makes any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the bank (sec. 153). In the last case he is also responsible for all damages sustained by any person in consequence of such statement.

20. Qualifications.—Each director shall hold stock of the bank, of which stock he shall be the absolute and sole owner in his individual right and not as trustee or in the right of another, on which not less than—

(a) three thousand dollars have been paid up, when the paid-up capital stock of the bank is one million dollars or less;

(b) four thousand dollars have been paid up, when the paid-up capital stock of the bank is over one million dollars and does not exceed three million dollars;

(c) five thousand dollars have been paid up, when the paid-up capital stock of the bank exceeds three million dollars.

2. Required Stock Holdings.—No person shall be elected or continue to be a director unless he holds stock, of which he is the owner as aforesaid, paid up to the amount required by this Act, or such greater amount as is required by any by-law in that behalf.

3. Majority to be British Subjects.—A majority of the directors shall be natural born or naturalized subjects of His Majesty, and domiciled in Canada. 53 V., c. 31, ss. 18 and 19, Am.

The shareholders may, under sec. 18, make by-laws requiring additional qualifications for a director.

21. Election of Directors.—The directors shall be elected by the shareholders at the annual general meeting.

2. At Chief Office.—The election shall take place at the place where the chief office of the bank is situate.

3. Notice.—Public notice of the annual general meeting shall be given by the directors by publishing such notice, for at least four weeks previously to the time of holding the election, in a newspaper published at the place where the chief office of the bank is situate. 53 V., c. 31, s. 19, Am.

PUBLIC NOTICE.—The public notice required is defined by the section, whereas in other sections (*e. g.*, secs. 13 and 31), the words "public notice" are used without any limitation and therefore mean public notice as defined by sec. 2, sub-sec. 2.

The first directors are elected at the meeting of subscribers called by the provisional directors under sec. 13. Thereafter the directors are elected at the annual general meeting held each year on the day appointed by the charter or by by-law of the shareholders (secs. 18 and 21), or, if the election does not take place on such day, then on any other day according to the by-laws made by the shareholders in that behalf (secs. 18 and 27). The directors, as

soon as may be after their own election, elect two of their number to be president and vice-president respectively, and they may also elect one of their number to be honorary president (sec. 24). A vacancy which occurs in the board is filled in the manner provided by the by-laws (secs. 18 and 25), and if such vacancy is in the office of president or vice-president, the directors elect such officer from among themselves (sec. 26). The president, the vice-president or any director may be removed by the shareholders at a special general meeting called for the purpose (sec. 31).

22 Who shall be Directors.—The persons, to the number authorized to be elected, who have the greatest number of votes at any election, shall be directors. 53 V., c. 31, s. 19.

23. Provision in case of Equality of Votes.—If it happens at any election that two or more persons have an equal number of votes, and the election or non-election of one or more of such persons as a director or directors depends on such equality, then the directors who have a greater number of votes or the majority of them, shall, in order to complete the full number of directors, determine which of the said persons so having an equal number of votes shall be a director or directors. 53 V., c. 31, s. 19.

24. Election of President and Vice-President.—The directors, as soon as may be after their election, shall proceed to elect, by ballot, from their number a president and one or more vice-presidents.

2. Honorary President.—The directors may also elect by ballot one of their number to be honorary president. 53 V., c. 31, s. 19; 4-5 E. VII., c. 4, s. 4. Am.

As to the duties of president and vice-president, see sec. 28.

25. Vacancies, how Filled—Proviso.—If a vacancy occurs in the board of directors, the vacancy shall be filled in the manner provided by the by-laws: Provided that, if the vacancy is not filled, the acts of a quorum of the remaining directors shall not be thereby invalidated. 53 V., c. 31, s. 19.

Sec. 18, sub-sec. 1, clause (e), confers upon shareholders powers to regulate by by-law the method of filling vacancies in the board.

26. Vacancy in Presidency or Vice-Presidency.—If a vacancy occurs in the office of the president or vice-president, the directors shall, from among themselves, elect a president or vice-president, who shall continue in office for the remainder of the year. 53 V., c. 31, s. 19, Am.

27. Postponed Election of Directors.—If an election of directors is not made on the day appointed for that purpose, such

election may take place on any other day, according to the by-laws made by the shareholders in that behalf.

2. Continuance in Office.—The directors in office on the day appointed for the election of directors shall remain in office until a new election is made. 53 V., c. 31, s. 20.

Cf. sec. 18, sub-sec. 1 (e).

28. Meetings of Directors.—The president, or in his absence a vice-president, shall preside at all meetings of the directors.

2. If at any meeting of the directors both president and vice-presidents are absent, one of the directors present, chosen to Act *pro tempore*, shall preside.

3. Voting.—The president, vice-president or president *pro tempore*, so presiding, shall vote as a director, and shall, if there is an equal division on any question, also have a casting vote. 53 V., c. 31, s. 21.

Cf. sec. 12 and sec. 18.

DUTIES OF PRESIDENT AND VICE-PRESIDENT.—Cf., sec. 24.

The only duties imposed specially upon the president (or in his absence the vice-president) by the Act are to preside at meetings of directors (sec. 28), to sign the bonds and other obligations of the bank (sec. 73), and to sign the monthly and other returns to the government (secs. 112, 113 and 114).

29. General Powers of Directors.—The directors may make by-laws and regulations, not repugnant to the provisions of this Act or to any by-law duly passed by the shareholders, or to the laws of Canada, with respect to—

(a) the management and disposition of the stock, property, affairs and concerns of the bank;

(b) the duties and conduct of the officers, clerks and servants employed therein; and,

(c) all such other matters as appertain to the business of a bank.

2. Existing By-Laws Continued.—All by-laws of the bank heretofore lawfully made and now in force with regard to any matter respecting which the directors may make by-laws under this section, including any by-laws for the establishing of guarantee and pension funds for the employees of the bank, shall remain in force until they are repealed or altered by other by-laws made under this Act. 53 V., c. 31, s. 22.

The exercise by the directors of the powers given by this section is subject to any by-laws made by the shareholders under sec. 18.

Powers in regard to various matters are conferred upon the directors by secs. 30, 31, 34, 36 to 38, 40 to 42, 56, 57 and 73.

(1) *Busby v. Bank of Montreal*. N.B. Equity cases, 62 (1880).

Held, that no power was vested in the directors of a bank to pass a by-law fixing the date of the annual meeting of the shareholders for the election of directors, and that it was therefore *ultra vires*; and that one shareholder could not maintain a bill in his own name alone respecting an injury common to all the shareholders.

30 Appointment of Officers.—The directors may appoint as many officers, clerks and servants as they consider necessary for the carrying on of the business of the bank.

2. **Salaries.**—Such officers, clerks and servants may be paid such salaries and allowances as the directors consider necessary.

3. **Security.**—The directors shall, before permitting any general manager, manager, or other officer, clerk or servant of the bank to enter upon the duties of his office, require him to give a bond, guarantee or other security to the satisfaction of the directors, for the due and faithful performance of his duties. 53 V., c. 31, s. 23. Am.

Under this section the directors may appoint a general manager, and branch managers, and also subordinate officers and clerks. They may also assign to one or more members of the board of directors the special supervision of particular branches.

(1) *Banque Nationale vs. City Bank*, 17 L. C. J. 197 (1873).

Cheques fraudulently initialled as accepted by the manager of a bank, and for which the drawer has given in exchange to the manager certain securities which the bank retains, cannot be repudiated by the bank, when the cheques are held by a *bona fide* holder for value.

(2) *Grieve vs. Molsons' Bank*, 8 O. R. 162 (1885).

A bank manager is not acting without the scope of his authority in accepting the cheque of a customer to deliver to another customer on a particular day, or on the happening of a special event.

(3) *Exchange Bank vs. La Banque du Peuple*, M. L. R. 3 Q. B. 232 (1886).

A bank is liable for the acceptance by its president and cashier of cheques marked good on future dates specified, which were afterwards discounted by the plaintiff in good faith and in the ordinary course of business. (Affirmed by Supreme Court, 10 L. N. 362).

(4) *Exchange Bank vs. La Banque du Peuple*, 10 L. N. 362 (1887).

In 1881, G., having business transactions with the Exchange Bank, agreed with C., president and manager of the bank, that in lieu of further advances the bank would accept his cheque, but made payable at a future date. On the 19th October, 1881, G. drew a cheque on the Exchange Bank, and after having it accepted as follows: "Good on February 19th, 1882, T. Craig, president," got the cheque discounted by the People's Bank and deposited the proceeds to his credit in the Exchange Bank. This cheque was renewed on the 23rd of May, and it was presented at the Exchange Bank and paid. Thereupon another cheque for the same amount was accepted in the same way and discounted by the People's Bank on the 7th September, 1883. At the time of the suspension of payment by the Exchange Bank, the People's Bank had in its possession four cheques

signed by G., and accepted by T. Craig, president of the Exchange Bank, which were subsequently presented for payment on the dates when they were payable, and duly protested, and also after the three days of grace.

The total amount of these cheques was \$66,020.64, and one of them, viz., the one dated 7th September, 1883, for \$31,000, was a renewal of the cheque, the proceeds of which had been paid to the credit of G. in the Exchange Bank.

On an action by the People's Bank against the Exchange Bank, for the recovery of the sum of \$66,020.74, based on the four cheques in question, the Exchange Bank pleaded *inter alia* that C. had not acted within the scope of his duties and within the limits of his powers, and that the bank had never authorized or ratified his acceptance of G.'s cheques.

Held, affirming the judgment of the Court of Queen's Bench, that under the circumstances the Exchange Bank was liable for the acceptance by their president and manager of G.'s cheques discounted by the People's Bank in good faith and in due course of business.

(5) *La Banque Jacques Cartier vs. Montreal City and District Savings Bank*, 13 App. Cas. 111 (1887).

Where the accounts of a bank in liquidation had been changed so as to represent the bank as a debtor in respect of a sum which had been borrowed by its manager for his own purposes:—

Held, that the doctrine of acquiescence and ratification by the liquidating authorities would not avail to render the bank liable to pay a debt which it never owed.

(6) *Bank of Commerce vs. Jenkins*, 16 O. R. 215 (1888).

A deed executed by the manager of a bank, not being under the corporation seal, nor under a signature or sign manual, where it executed documents, was not binding on the bank.

(7) *Merchants' Bank vs. Whidden*, 19 S. C. R. 53 (1891).

K., agent of a bank and also a member of a business firm, procured accommodation drafts from a customer of the bank, which he discounted as such agent, and, without endorsing the drafts, used the proceeds, in violation of his instructions from the head office, in the business of his firm. The firm, having become insolvent, executed an assignment in trust of all their property by which the trustee was to pay "all debts by the assignors or either of them due and owing or accruing or becoming due and owing" to the said bank as first preferred creditor, and to the makers of the accommodation paper, among others, as second preferred creditors. The estate not proving sufficient to pay the bank in full, a dispute arose as to the accommodation drafts, the bank claiming the right to disavow the action of the agent in discounting them and appropriating the proceeds in breach of his duty as creating a debt due to it from his firm, the makers claiming that they were really debts due to the bank from the insolvents. In a suit to enforce the carrying out of the trusts created by the assignment—

Held, that the drafts were "debts due and owing" from the insolvents to the bank and within the first preference created by the deed.

K. procured the accommodation paper for the sole purpose of borrowing the money of the bank for his firm, and when the firm received that money they became debtors to the bank for the amount.

That the agent being bound to account to the bank for the

funds placed at his disposal, he became a debtor to the bank, on his authority being revoked, for the amount of these drafts as money for which he had failed to account. Whether or not the bank had a right to elect to treat the act of the agent as a tort was not important, as in any case there was a debt due.

(8) *Exchange Bank vs. Fletcher*, 19 S. C. R. 278 (1891).

The Exchange Bank, in advancing money to F. on the security of Merchants' Bank shares, caused the shares to be assigned to their managing director and an entry to be made in their books that the managing director held the shares in question on behalf of the bank as security for the loan. The bank subsequently credited F. with the dividends accruing thereon. Later on, the managing director pledged these shares to another bank for his own personal debt, and absconded.

Held, that upon re-payment by F. of the loan made to him, the Exchange Bank was bound to return the shares or pay their value. The prohibition to advance upon security of shares of another bank contained in the amendment to the general banking act applies to the bank and not to the borrower.

Assuming that the subsequent amendment of the general banking act forbade the taking of such security by any bank, the amendment did not alter the charter of the Exchange Bank, 35 V., ch. 51 (D), under which the Exchange Bank had power to take the shares in question in its corporate name as collateral security. To take such security may have become an offence against the banking law, punishable from the beginning as a misdemeanor and subject to a pecuniary penalty, but it was *ultra vires*. Art. 14 C. C. which declares that prohibitive laws import nullity, has no application to such a case.

(9) *Thompson vs. Bank of Nova Scotia*, 13 C. L. Times 311 (1893).

It is no part of the business of a bank agent to institute criminal proceedings against a debtor of the bank, and his doing so is in excess of authority.

(10) *Richards vs. Bank of Nova Scotia*, 26 S. C. R. 381 (1896).

Where an agent does an act outside of the apparent scope of his authority, and makes a representation to the person with whom he acts to advance the private ends of himself or someone else other than his principal, such representation cannot be called that of the principal. In such a case it is immaterial whether or not the person to whom the representation was made believed the agent had authority to make it.

The local manager of a bank having received a draft to be accepted induced the drawer to accept by representing that certain goods of his own were held by the bank as security for the drafts. In an action on the draft against the acceptor—

Held, that the bank was not bound by such representation; that by taking the benefit of the acceptance it could not be said to adopt what the manager said in procuring it, which would burden it with responsibility instead of conferring a benefit; and that the knowledge of the manager with which the bank would be affected should be confined to knowledge of what was material to the transaction and the duty of the manager to make known to the bank.

Bradfield vs. Bank of Ottawa, 19 O. W. R. 671. 2 O. W. N. 1383.

Adams vs. Craig, 24 O. L. R. 490 (C. A.)

The plaintiff sold goods to C. and received from C. a cheque upon

a bank of which C. was a customer, for the price agreed upon. The manager of the bank knew that a sale had been arranged by C. of goods which included the goods of the plaintiff, and that the proceeds were to be placed to C.'s credit in the bank, and that, without the plaintiff's agreement and acquiescence, the sale arranged could not be carried through. C.'s account was much overdrawn, and the manager promised orally to the plaintiff that, upon the sale being completed and the purchase-money placed to the credit of C., the bank would pay the amount of the cheque. The sale was carried out and the proceeds paid into the bank; and the plaintiff sued the bank and C. for the amount of the cheque.

Held, there was a new and distinct consideration for the promise made by the bank manager, namely, the forbearance to exercise legal rights on the part of the plaintiff and the direct interest of and benefit to the bank in the property passing to their customer; and the bank were bound by the manager's promise, and were liable for the amount of the cheque. Cases cited.

Hochelaga Bank vs. Larue (1910), 13 W. L. R. 114.

The plaintiffs, a banking corporation, held the defendants' promissory note for \$9,000. As collateral security for the payment of the note, the plaintiffs held two promissory notes of C., aggregating the same amount. By a private arrangement between the plaintiffs' manager and C., the manager returned to C. his promissory notes, undertaking with C. to be liable to the plaintiffs for what C. would have to pay. In an action by the plaintiffs upon the defendants' note, the defendants disputed liability upon the ground that the plaintiffs were not in a position to return to them C.'s notes which were their property and pledged by them as collateral security for the payment of the note sued on. This was set up both as matter of defence and counterclaim:—*Held*, a good ground for counterclaim upon the evidence it must be taken that C.'s notes were, when returned to him, worth their face value, and so the defendants' damages equalled the plaintiffs' claim upon the defendants' note, and judgment should go for the plaintiffs for the amount of their claim, and on the counterclaim, for the defendants for theirs the one being set off against the other. The act of the manager was the act of the plaintiffs so far as regarded the defendants, between whom and the bank there existed the relationship of pledgor and pledgee. In the case of documents creating or evidencing rights, the thing pledged must be taken to be both the instrument and the right—not the bare instrument without the right, nor the mere right without the instrument. Review of the authorities. Judgment of Harvey, J., varied as to form.

Coates vs. Sovereign Bank of Canada, 20 D. L. R. 142.

The general manager of a Canadian chartered bank can have from it no ostensible authority to do acts on behalf of the bank which would be *ultra vires* on its part, e. g., purchasing or dealing in shares of the bank's own capital stock.

Sovereign Bank vs. Pyke, 14 D. L. R. 383.

The general manager of a bank has no implied authority from the bank to agree on its behalf to remunerate or indemnify a person who purchased shares of the bank's stock at the manager's instance to be held subject to his order, and will be liable on the liquidation of the bank for the overdraft occasioned by the bank's payment of his cheques given for the purchase price. (*Bank of Montreal vs. Rankin*, 4 L. N. (Que.) 302, applied; compare *McMillan vs. Stavert*,

13 D. L. R. 761 (P. C.); affirming *Starert vs. McMillan*, 24 O. L. R. 456, 3 O. W. N. 6).

McMillan vs. Starert, 13 D. L. R. 761; 49 C. L. J. 669; 24 O. W. R., 936.

Where, in breach of trust and without the authority of any resolution of the board of directors or other corporate act of a chartered bank, funds of the bank were used by its manager, in connivance with one or more of the directors, to make purchases of bank shares in the names of brokers and others who were allowed to overdraw their accounts with the bank to make the purchases, knowing that the bank was prohibited by statute from purchasing or dealing in its own shares, the duty of the other directors, on ascertaining that such breach of trust had been committed, was to repudiate the transactions and insist on the restoration to the bank of the funds illegally diverted; in such event there could be no claim to indemnity against the bank on the part of such nominal purchasers even if the bank asserted a lien on the shares for the overdrafts while repudiating the purchases; nor can any claim for indemnity against the bank arise in favour of the directors who, after the illegal diversion of funds had occurred, attempted to rectify the same by an adjustment whereby promissory notes of the directors were given to the bank to recoup it for the money unlawfully diverted, although the recoupment represented the price of the shares illegally purchased. (*Starert vs. McMillan* (1911), 24 O. L. R. 456, 3 O. W. N. 6, affirmed on appeal).

McIntosh vs. Bank of New Brunswick, 15 D. L. R. 375.

The payee of a cheque is placed on strict enquiry as to the authority of the manager to bind the bank by its certification of the cheque where the drawer did not have funds on deposit to meet it and the payee knew that the nominal drawer of the cheque gave same in the personal interest of the bank manager.

In order to bind a bank by a transaction in which a branch manager acts for himself, or as agent for a third person in a matter in which the bank has no interest, the manager must possess special authority.

The manager of a branch bank cannot, in the absence of special authority, bind a bank by the certification of a cheque of a third person given in payment of the individual debt of the manager, or of the drawer, in the creation of which the manager acted as the latter's agent, unconnected with his duty to the bank, where the drawer did not have funds on deposit to meet the cheque.

A letter in the name of a bank written and signed by a branch manager, promising to redeem bonds deposited by the manager as collateral to his individual debt, or of a third person for whom the manager acted as agent, and in which the bank had no interest, is not binding on the bank unless the branch manager was expressly authorized by the bank to make the agreement.

The Bank Act does not empower the manager or branch manager of a bank to pledge its credit to the payment of the debt of a person in which the bank has no interest.

The appointment of a person as manager of a branch bank does not imply any authority to bind the bank by an agreement to purchase shares of stock or bonds on the bank's account.

The general manager of a bank cannot ratify an unauthorized contract of a branch manager so as to bind the bank unless it be one that the general manager has authority to make.

SECURITY TO BE GIVEN.

(1) *City Bank vs. Brown*, 2 L. C. R. 246 (1852).

A bond conditional upon the due fulfilment of the duties of an officer in a bank is made void by the reduction of the salary stipulated, in favor of such officer, in and by the deed containing such bond, and that such reduction, without the consent of the sureties, has the effect of a novation.

(2) *Bank of Upper Canada vs. Bradshaw*, L. R., 1 P. C. 479 (1857).

In an action brought by a banking company against their late manager and cashier, to recover moneys belonging to the bank alleged to have been improperly applied in discounting bills, etc., for his own advantage, for the benefit of parties and companies with whom he was connected, and in which he was interested, it appeared that such transactions were all in the ordinary course of the business of the bank; that he had not exceeded the power and authority with which he was entrusted; and that no case of bad faith could be proved against him. Under such circumstances, the action of the bank was dismissed.

(3) *Bank of Toronto vs. European Assurance Society*, 14 L. C. J. 186 (1870).

Held, that the allowing, by a bank manager, of overdraft, without security, is an irregularity within the meaning of a policy guaranteeing the bank against such loss as might be occasioned to the bank by the want of integrity, honesty and fidelity, or by the negligence, defaults or irregularities of the manager, where, in the opinion of the court, the evidence established that the manager concealed the fact of the overdrafts from the head office by fictitious returns, and acted in improper concert with the parties whom he allowed to overdraw.

(4) *Banque Nationale vs. Lesperance*, 4 L. N. 147 (1881).

The teller of a bank endorsed on a parcel of bank notes the amount which it was supposed to contain. It was subsequently discovered that the parcel was \$6,200 short, and it was ascertained that a deficiency of the same amount existed in the teller's accounts, and had been during several years skilfully covered up and concealed from the knowledge of the authorities of the bank, who had made the usual inspections.

Held, that a guarantee insurance company which had guaranteed the fidelity of the teller was liable for the deficiency, but only to the extent which occurred after the contract was made.

(5) *Exchange Bank vs. Gault*, 30 L. C. J. 259 (1886).

A. gave a bond that C., who was cashier of a bank, would faithfully perform his duties. C. was afterwards made president of the bank, and when in such a position committed a defalcation.

Held, that the bond was void.

(6) *Springer vs. Exchange Bank; Barnes vs. Exchange Bank*, 14 S. C. R. 716 (1887).

The sureties of an absconding bank cashier are not relieved from liability by showing that the bank employed their principal in transacting what was not properly banking business, in the course of which he appropriated the bank funds to his own use, the claim against sureties being for the moneys so appropriated by the principal and not for losses occasioned by such illegal transactions.

(7) *London Guarantee and Accident Co. vs. Hochelaga Bank, R. J. Q. R., 3 Q. B. 25 (1893).*

The cashier of a bank removed bundles of notes from the bank premises to his residence, for the purpose of signing them, but it appeared that he brought them all back, and, subsequently, in his office in the bank, he put a number of \$5.00 notes in the bundles, instead of \$10.00 notes, and thus defrauded the bank of \$8,140.

Held, 1. In intrusting the notes to the cashier to be signed, there was no negligence on the part of the bank involving a violation of the terms of the contract, and the loss was one caused by "fraud and dishonesty amounting to embezzlement" on the part of the employee, and came under the guarantee given by the policy.

The same employee, shortly before his flight from the country, caused his own cheques to the amount of \$15,574 to be certified by the ledger-keeper of the bank, although he, the cashier, had no funds there.

2. This act, although, technically speaking, not constituting the crime of embezzlement, was "fraud and dishonesty amounting to embezzlement" on the part of the cashier, and came under the guarantee of the policy. These words in the policy have to be taken in their ordinary or vulgar sense, as otherwise the words "fraud or dishonesty" would be without effect.

3. The fact that the bank recovered a large part of the money taken did not affect its right to claim under the policy, there being a balance of total loss remaining which exceeded the amount of the policy.

4. The claim of the bank was not affected by its communications with the employee after his flight, such communications not having had any injurious effect as regards the guarantee company.

On the 30th May the cashier did not appear at his office, and a number of the cheque certified by the ledger-keeper, as above mentioned, were presented and paid, although he had no amount to his credit to check against. On the following day the bank gave notice of the defalcation to the local agent of the guarantee company—

5. The notice was given *en temps utile*, and the bank was not guilty of negligence.

Heard vs. Union Bank (1877), 2 P. E. L. R. 237.

H. had been manager of the bank and certain losses were made which the bank claimed he was liable to make good. On reference to arbitration an award for \$1,718 was found against him. He then brought this action for three quarters salary, and defendants pleaded the award as a set-off. A verdict for \$1,703 was found in plaintiff's favour. The bank moved to amend the verdict by entering it for the bank for \$13, and in support of the motion produced affidavits from all the jurors, stating that what they intended was to find the amount plaintiff was entitled to for three quarters salary, leaving him liable for the amount of the award:—

Held (Peters, J.), that the verdict must be amended as moved, without sending the case to another jury.

31. Special General Meeting.—A special general meeting of the shareholders of the bank may be called at any time by—

(a) the directors of the bank or any four of them; or,

(b) any number not less than twenty-five of the shareholders, acting by themselves or by their proxies, who are together pro-

prietors of at least one-tenth of the paid-up capital stock of the bank.

2. **Notice.**—Such directors or shareholders shall give six weeks' previous public notice, specifying therein the object of such meeting.

3. **Place.**—Such meeting shall be held at the usual place of meeting of the shareholders.

4. **Removal of President, Vice-President or Director — Another to Replace.**—If the object of the special general meeting is to consider the proposed removal, for maladministration or other specified and apparently just cause, of the president or a vice-president, or of a director of the bank, and if a majority of the votes of the shareholders at the meeting is given for such removal, a director to replace him shall be elected or appointed in the manner provided by the by-laws of the bank, or, if there are no by-laws providing therefor, by the shareholders at the meeting.

5. **Choosing another President or Vice-President.**—If it is the president or vice-president who is removed, his office shall be filled by the directors in the manner provided in case of a vacancy occurring in the office of president or vice-president. 53 V. c. 31. s. 24.

NOTICE OF MEETING.—Probably the only notice required for the meeting is a public notice as defined by sec. 2 (2).

As to shareholders' meetings generally, Cf. sec. 18.

The conditions for the calling of a special general meeting prescribed by this section must be strictly complied with.

The business to be transacted at the meeting should be mentioned in the notice.

FILLING VACANCIES.—If a vacancy is created by a proceeding under this section, it may be filled in the manner provided by sec. 25.

32. **One Vote for Each Share.**—Every shareholder shall, on all occasions on which the votes of the shareholders are taken, have one vote for each share held by him for at least thirty days before the time of meeting.

2. **Ballot.**—In all cases when the votes of the shareholders are taken, the voting shall be by ballot.

3. **Majority to Determine.**—All questions proposed for the consideration of the shareholders shall be determined by a majority of the votes of the shareholders present or represented by proxy

4. **Casting Vote.**—The chairman elected to preside at any meeting of the shareholders shall vote as a shareholder only, unless there is a tie, in which case he shall, except as to the election of a director, have a casting vote.

5. **As to Joint Holders of Shares.**—If two or more persons

are joint holders of shares, any one of the joint holders may be empowered, by letter of attorney from the other joint holder or holders, or a majority of them, to represent the said shares, and to vote accordingly.

6. **Proxies.**—Shareholders may vote by proxy, but no person other than a shareholder eligible to vote shall be permitted to vote or act as proxy.

7. **Officers not to Vote.**—No general manager, manager clerk or other subordinate officer of the bank shall vote either in person or by proxy, or hold a proxy for the purpose of voting.

8. **Renewal of Proxies.**—No appointment of a proxy to vote at any meeting of the shareholders of the bank shall be valid for that purpose, unless it has been made or renewed in writing within on year last preceding the time of such meeting.

9. **Calls must be Paid before Voting.**—No shareholder shall vote, either in person or by proxy, on any question proposed for the consideration of the shareholders of the bank at any meeting of the shareholders, or in any case in which the votes of the shareholders of the bank are taken, unless he has paid all calls made by the directors which are then due and payable. 53 V., c. 31, s. 25, Am.

The chairman has *prima facie* authority to decide all incidental questions which arise at such meeting and necessarily require decision at the time.

The chairman has a casting vote in case of a tie (except as to a tie in the election of directors—this event being provided for by sec. 23).

33. **Increase of Capital.**—The capital stock of the bank may be increased, from time to time, by such percentage, or by such amount, as is determined upon by by-law passed by the shareholders at the annual general meeting, or at any special general meeting called for the purpose.

2. **Approval of Treasury Board.**—No such by-law shall come into operation, or be of any force or effect, unless and until a certificate approving thereof has been issued by the Treasury Board.

3. **Conditions for Approval.**—No such certificate shall be issued by the Treasury Board unless application therefore is made within three months from the time of the passing of the by-law, nor unless it appears to the satisfaction of the Treasury Board that a copy of the by-law, together with notice of intention to apply for the certificate, has been published for at least four weeks in *The Canada Gazette*, and in one or more newspapers published in the place where the chief office of the bank is situate.

4. **Treasury Board may Refuse.**—Nothing herein contained

shall be construed to prevent the Treasury Board from refusing to issue such certificate if it thinks best so to do. 53 V., c. 31, s. 26.

34. Allotment—To Present Shareholders.—Any of the original unsubscribed capital stock, or of the increased stock of the bank, shall, at such time as the directors determine, be allotted to the then shareholders of the bank *pro rata*, and such rate and on such terms as are fixed by the directors: Provided that—

(a) no fraction of a share be so allotted;

(b) in no case shall a rate be fixed by the directors, which will make the premium, if any, paid or payable on the stock so allotted, exceed the percentage which the rest or reserve fund of the bank then bears to the paid-up capital stock thereof; and

(c) payment shall not be required in greater amounts or at shorter intervals than ten per cent. of the price every thirty days.

2. Notice of Allotment.—Notice of allotment shall be mailed to the shareholders at their last known post office address as shown by the records of the bank, and the directors shall in such notice fix a date not less than ninety days from the day on which the notice is mailed within which the allotment is to be accepted.

3. Allotment to the Public.—Any of such allotted stock which is not accepted by a shareholder to whom the allotment has been made, within the time so fixed, or which he declines to accept, together with such shares as remain unallotted because of the provisions of this section that no fraction of a share can be allotted, may be offered for subscription to the public in such manner and on such terms as the directors prescribe.

4. Distribution of Fractions.—Any sums received in excess of the rate per share fixed by the directors under this section in respect of fractions of shares offered for subscription to the public shall be rateably distributed to the respective shareholders from whose shares the fractions arose. 53 V., 31, s. 27. Am.

35. Reduction of Capital.—The capital stock of the bank may be reduced by by-law passed by the shareholders at the annual general meeting, or at a special general meeting called for the purpose.

2. Approval Treasury Board.—No such by-law shall come into operation or be of force or effect until a certificate approving thereof has been issued by the Treasury Board.

3. Conditions for Approval.—No such certificate shall be issued by the Treasury Board unless application therefor is made within three months from the time of the passing of the by-law, nor unless it appears to the satisfaction of the Board that:—

(a) the shareholders voting for the by-law, represent a majority in value of all the shares then issued by the bank; and,

(b) a copy of the by-law, together with notice of intention to apply to the Treasury Board for the issue of a certificate approving thereof, has been published for at least four weeks in *The Canada Gazette*, and in one or more newspapers published in the place where the chief office of the bank is situate.

4. Treasury Board may Refuse.—Nothing herein contained shall be construed to prevent the Treasury Board from refusing to issue the certificate if it thinks best so to do.

5. Statements to be Submitted to Treasury Board.—In addition to evidence of the passing of the by-law, and of the publication thereof in the manner in this section provided, statements showing,—

(a) the amount of stock issued;

(b) the number of shareholders represented at the meeting at which the by-law passed;

(c) the amount of stock held by each such shareholder,

(d) the number of shareholders who voted for the by-law;

(e) the amount of stock held by each of such last mentioned shareholders;

(f) the assets and liabilities of the bank in full; and,

(g) the reasons and causes why the reduction is sought; shall be laid before the Treasury Board at the time of the application for the issue of a certificate approving the by-law.

6. Not to Affect Liability of Shareholders.—The passing of the by-law, and any reduction of the capital stock of the bank thereunder, shall not in any way diminish or interfere with the liability of the shareholders of the bank to the creditors thereof at the time of the issue of the certificate approving the by-law.

7. If Legislation is asked to Sanction Reduction.—If in any case legislation is sought to sanction any reduction of the capital stock of any bank, a copy of the by-law or resolution passed by the shareholders in regard thereto, together with statements similar to those by this section required to be laid before the Treasury Board, shall, at least one month prior to the introduction into Parliament of the bill relating to such reduction, be filed with the Minister.

8. Limit of Reduction.—The capital shall not be reduced below the amount of two hundred and fifty thousand dollars of paid-up stock. 53 V., c. 31, s. 28.

35a. Re-Division of Shares into Higher Values.—The capital stock of any bank heretofore incorporated which is at the date of the passing of this Act divided into shares of fifty dollars

each may be re-divided into shares of one hundred dollars each, by by-law passed by the shareholders at any annual, general meeting or at any special general meeting called for the purpose.

2. Allotment of Shares, and New Certificates.—Each shareholder shall be entitled on any re-division made in pursuance of the next preceding subsection to an allotment of one share of one hundred dollars for each two shares of fifty dollars each then held by him, and the bank may call in the existing certificates of stocks, and issue new certificates in lieu thereof.

3. Sale of Shares of Holders of One Fifty Dollar Share on tender and Public Notice.—As soon as may be after such re-division the bank shall call for tenders for the purchase of the share of persons who continue to hold respectively only one fifty dollar share by giving public notice for four weeks, and the advertisement shall state the total number of shares so offered; and a copy of such advertisement shall be mailed in the post office, registered and post paid, to the last known address of each of such shareholders at least twenty-one days before the last day fixed thereby for receipt of tenders, and the tenders shall be for two such fifty dollar shares or multiples thereof, and the highest tenders shall be entitled on payment of the amount tendered, to one one hundred dollar share for each two fifty dollar shares in respect of which they were the highest bidders.

4. Distribution of Proceeds.—The proceeds derived from the sale of the shares referred to in the next preceding subsection shall, without deduction for cost or charges, be distributed ratably among the former shareholders entitled thereto, and the payment of the amounts shall relieve the bank from all liability to such shareholders in respect of the share so sold.

5. Allotment of Unsubscribed and Increased Capital.—Any of the original unsubscribed capital stock, or of the increased capital stock of a bank whose shareholders have passed a by-law under subsection 1 of this section, shall when issued be allotted in shares of one hundred dollars each.

6. When Division Approved by Shareholders before 1st July, 1913.—If before the first day of July, 1913, the shareholders of any such bank at an annual general meeting or at a special general meeting called for the purpose have approved of the division of the capital stock into shares of one hundred dollars each, the by-law referred to in subsection 1 of this section may be passed by the directors.

SHARES AND CALLS.

36. Shares Personalty.—The shares of the capital stock of the bank shall be personal property.

2. Books of Subscription.—For the purpose of disposing of

stock which may be offered for subscription to the public under section 34 of this Act, stock books may be opened at the chief office of the bank, or at such of its branches, or elsewhere, as the directors prescribe.

3. Particulars Entered.—Each subscriber shall, at the time of subscription, give his post office address, and description, and these particulars shall appear in the stock books in connection with the name of the subscriber and the number of shares subscribed for.

(1) *In re Central Bank*, Nasmith's case, 16 O. R. 293 (1888).

Where 10 per cent. was not paid at the time of the original subscription of bank shares, nor within thirty days thereafter, as required by the Banking Act, R. S. C., ch. 120, sec. 20, but was paid before the first transfer took place, and was accepted by the bank—

Held, that subsequent transferees of the shares were properly placed upon the list of contributories in winding-up proceedings.

The provision as to payment is for the protection of the public, and till payment is made the person subscribing may not be able to deal with the stock, but he is at least equitable owner, and may become legally entitled on making the prescribed payment.

Where the evidence showed that the bank had adopted the practice of dealing with their shares by way of marginal transfer, the first transfer being in blank, subject, as by marginal note, to the order of a broker, and the ultimate purchaser signing an acceptance in the book immediately under the transfer so signed in blank by the seller, the intermediate dealing of the broker being omitted from extended record in the bank books, and the transferees were duly entered as shareholders in the stock ledger of the bank—

Held, that this amounted substantially to an acceptance of shares transferred in blank, which was lawful where transfer by deed was not prescribed, and the entry in the stock ledger amounted to registration within the meaning of the Act.

Where it appeared that in one such case the transferee did not sign the acceptance, but that he subsequently dealt with the shares by selling and transferring them—

Held, that the transferees from him were properly placed upon the list of contributories, notwithstanding anything in the Banking Act, R. S. C., ch. 120, sec. 20.

Where one of those placed upon the list of contributories acquired his shares within one month from the suspension of the bank—

Held, that he was liable as a contributory, R. S. C., ch. 120, sec. 77, is cumulative so as to make also liable those who have been holders during the month preceding the suspension, leaving them to discuss among themselves their respective liabilities.

Where the shares which had been transferred to one placed on the list of contributories had been previously held by the cashier of the bank in trust, as alleged, for the bank, which it was objected was thus trafficking in its own shares—

Held, that, even if the cashier did hold the shares in trust for the directors of the bank, this would not be necessarily illegal, as he might have such shares, under s. 45 of the Banking Act, as security for overdue debts; and, besides, this was a matter which, though it might give the appellant a right to rescind during the currency of the banking institution, became of no moment after the

rights of creditors represented by the liquidators arose. The matter was not an absolute nullity but, at most, one which the shareholders could waive as voidable, and it became, by the suspension, of unimpeachable validity as between the appellant and the liquidators. On an appeal the judgment was confirmed. *Vide* 18 O. A. R. 209 (1891).

(2) *In re Central Bank*, Baine's Case, 16 O. A. R. 237 (1889).

One B. subscribed for certain shares of capital stock of the Central Bank of Canada, but did not at the time of the subscription, nor within thirty days thereafter, make any payment thereon. About eight months later, however, payment was made by B. to the bank, and the bank accepted payment from him of 20 p. c. of the amount subscribed, and subsequently dividend cheques were issued by the bank in favor of B., and endorsed by him, and were paid.

Held, where there is an actually signed subscription contract, an actual receipt by the bank from the subscriber of a payment on account of a number of shares equal to those mentioned therein, and a subsequent receipt by that person of dividends on that number, an acknowledgment of the subscription contract at a time within which a payment could be effectually made thereon is to be presumed, and, under the circumstances, B. and the bank were respectively estopped as against each other from denying that his subscription was re-acknowledged, and that he had been a stockholder.

37. Notice of Double Liability.—There shall be printed in small pica type, or type of larger size, on each page in the stock books upon which subscriptions are recorded, and on every document constituting or authorizing a subscription, on a part of the page and document, respectively, which may be readily seen by the person recording the subscription, or by the person signing the document, a copy of section 125 of this Act.

38. Calls on Shares.—The directors may make such calls of money from the several shareholders for the time being, upon the shares subscribed for by them respectively, as they find necessary.

2. Number of.—Any number of calls may be made by one resolution.

3. Intervals for Calls.—Such calls shall be payable at intervals of not less than thirty days.

4. Notice.—Notice of such calls shall be given to the shareholders.

5. Limitation.—No such call shall exceed ten per cent. of each share subscribed. 53 V., c. 31, s. 31, Am.

Farmers Bank vs. Blow, 13 O. W. R. 1041, 18 O. L. R. 530.

Defendant subscribed in writing for stock in plaintiff bank on strength that plaintiff would open a branch at S. This plaintiff did, but discontinued it in a few months from lack of business.

Defendant subscribed in writing for stock in plaintiff bank of his subscription that the branch would be maintained at S., but in

this was unsuccessful. The stock was to be paid for in monthly instalments of \$10 per share, commencing 30 days after allotment, and continuing at intervals of 30 days till paid:—

Held, such an arrangement not *ultra vires* under above sections.

Cf. secs. 125-130, as to calls to be made in the event of the insolvency of the bank. There is no provision in sec. 38 such as that contained in sec. 128, that any number of calls may be made by one resolution.

Probably there must be an interval of at least thirty days (*i. e.*, thirty clear days excluding the first day and the last), between the passing of each by-law or resolution making a call, and a similar interval between each call and the day fixed for payment of such call. Cf. sec. 128.

(1) *McCracken vs. McIntyre*, 1 S. C. R. 479 (1877).

A person purchasing shares in good faith, without notice, as shares fully paid up, is not liable to an execution creditor of the company, whose execution has been returned *nulla bona* for the amount unpaid on the shares. Cf. *Bank of Liverpool vs. Bigelow*, 3 R. & C. 236, N. Sc. (1878).

(2) *Bank of Liverpool vs. Bigelow*, 3 R. & C. 236, N. Sc. (1878).

Action was brought against defendant as transferee of shares in plaintiff bank for calls. There was no valid transfer of the shares under the Act, but defendant had paid calls, given a receipt for a dividend, combined with others in appointing a proxy. *Held*, that he must be treated as a shareholder.

(3) *Gilman vs. Court*, 13 R. L. 619 (1882).

Several calls on the double liability of the shareholders can only be made by a single resolution, and the calls must be made at intervals of not less than thirty days.

When the calls have been regularly made, at sufficient intervals, but the notice of not less than thirty days has not been given before the day on which the calls are payable, the amount cannot be recovered.

(4) *Bank of Nova Scotia vs. Forbes*, 4 R. & G. 295, N. Sc. (1883).

Calls could not be legally made at one time, and none could legally be made but within ten days after the expiration of six months from the suspension of payment by the bank. And, further, that, in computing the statutory intervals between calls, the time must be reckoned exclusively of the day on which the previous call was payable.

39. Capital Lost to be Called For.—If any part of the paid-up capital is lost the directors shall, if all the subscribed stock is not paid up, forthwith make calls upon the shareholders to an amount equivalent to the loss: Provided that all net profits shall be applied to make good such loss.

2. Returns to Minister.—Any such loss of capital and the calls, if any, made in respect thereof, shall be mentioned in the next return made by the bank to the Minister. 53 V., c. 31, s. 48.

Sec. 58 provides that no dividend or bonus shall ever be declared so as to impair the paid-up capital of the bank. The recoupment, as directed by sec. 39, of paid-up capital lost, is not confined to the impairment of capital by reason of the declaration of dividends or bonuses.

Re Farmers Bank of Canada (Murray's Case), *Sproat's Executor's Case*, 14 D. L. R. 596; 5 O. W. N. 272.

A subscriber for bank shares, who, before the organization of the bank, rescinds his subscription for fraud and receives back the payment made by him, at the same time executing a document purporting to be an assignment to an agent of the bank, of his shares, which at the time, had not been allotted or issued, and who was never afterwards treated as a shareholder, cannot, on the subsequent insolvency of the bank, be placed on the list of contributories or held for a shareholder's double liability on the ground that the assignment of his shares was not made in conformity with the requirements of the Bank Act, since, at the time of the purported assignment, there were no shares he could assign.

40. Recovery of Calls and Instalments—Forfeiture.—

In case of the non-payment of any call, or instalment under an accepted allotment, the directors may, in the corporate name of the bank, sue for, recover, collect and get in any such call or instalment, or may cause and declare the shares in respect of which any such default is made to be forfeited to the bank. 53. V., c. 31 s. 32. Am.

Shares declared forfeited under this section must under sec. 41 be sold by the bank within six months. Sec. 41 also provides for a money penalty for non-payment of calls, the amount of such penalty to be deducted from the proceeds of the sale of the shares. See sec. 42 as to what the declaration or statement of claim in an action for calls shall contain.

See sec. 128 as to forfeiture resulting from non-payment of a call when the bank is insolvent.

(1) *Robertson vs. La Banque d'Hochelaga*, 4 L. N. 314 (1881).

Shares of bank stock cannot be declared forfeited for non-payment of calls, without first notifying the owner of the shares.

Imperial Bank vs. Holman (1910), 15 O. W. R. 681.

Plaintiff brought action to recover moneys advanced defendant on certain securities. Defendant was not a British subject and was served out of jurisdiction with notice of writ and statement of claim. Defendant did not enter an appearance, and plaintiff moved for judgment:—*Held*, that if "a call" by plaintiffs were a condition precedent to their right to payment, plaintiffs would not be entitled to judgment, but the Court found that "a call" was not a condition and gave plaintiff's judgment, the form of which to be adopted to meet the alternative case, made by the pleadings. Defendant given one month in which to elect.

41. Fine for Failure to Pay Call.—If any shareholder refuses or neglects to pay any instalment or call upon his shares of the capital stock at the time appointed therefor, such shareholder shall incur a penalty, to the use of the bank, of a sum of money equal to ten per cent. of the amount of such shares.

2. Sale of Forfeited shares at Public Auction.—If the directors declare any shares to be forfeited to the bank they shall, within six months thereafter, without any previous formality, other than public notice published for at least four weeks of their

intention so to do, sell at public auction the said shares, or so many of the said shares as shall, after deducting the reasonable expenses of the sale, yield a sum of money sufficient to pay the unpaid instalments or calls due on the remainder of the said shares, and the amount of penalties incurred upon the whole.

3. Transfer, How Executed.—The president, vice-president, or general manager of the bank shall execute the transfer to the purchaser of the shares so sold; and such transfer shall be as valid and effectual in law as if it had been executed by the original holder of the shares thereby transferred.

4. Remission of Forfeiture or Penalty.—The directors, or the shareholders at a general meeting may, notwithstanding anything in this section contained, remit, either in whole or in part, and conditionally or unconditionally, any forfeiture or penalty incurred by the non-payment of instalments or calls as aforesaid. 53 V., c. 31, s. 33, Am.

See sec. 40 as to power to declare shares forfeited.

42. Recovery by Action—Allegations.—In any action brought to recovery any money due on any instalment or call, it shall not be necessary to set forth the special matter in the declaration or statement of claim, but it shall be sufficient to allege that the defendant is the holder of one share or more, as the case may be, in the capital stock of the bank, and that he is indebted to the bank for instalments or calls upon such share or shares, in the sum to which the instalments or calls amount, as the case may be, stating the amount and number of the instalments or calls.

2. Proof.—It shall not be necessary, in any such action, to prove the appointment of the directors. 53 V., c. 31, s. 34.

TRANSFER AND TRANSMISSION OF SHARES.

43. Conditions for Transfer of Shares.—No transfer of the shares of the capital stock of the bank shall be valid unless—

(a) made, registered and accepted by the person to whom the transfer is made, or by his attorney appointed in writing, in a book or books kept for that purpose; and,

(b) the person making the transfer has, if required by the bank, previously discharged all his debts or liabilities to the bank which exceed in amount the remaining stock, if any, belonging to such person, valued at the then current rate.

2. Entries in Books.—The post office address and description of the transferee shall be entered in such book.

3. Fraction of Shares not Transferable.—No fractional part of a share, or less than a whole share shall be transferable.

4. Share Register Office to be Opened in Each Province.—

The bank may open and maintain in any province in Canada in which it has resident shareholders and in which it has one or more branches or agencies, a share-registry office, to be designated by the directors, at which the shares of the shareholders, resident within the province, shall be registered and at which, and not elsewhere, except as hereinafter provided, such shares may be validly transferred.

5. Register and Transfer of Shares.—

Shares of persons who are not resident in Canada or in any province in which there is a branch or agency of the bank may be registered and shall be transferable at the chief office of the bank or elsewhere, as the directors may designate.

6. When Change of Residence.—

Whenever there is a change in the ownership of shares, and the new shareholder resides in a province other than that in which the former shareholder resided, and whenever there is a change in the residence of a shareholder from one province to another, or whenever a shareholder residing outside of Canada becomes a resident of a province in Canada, the registration of the shares shall be changed to the registry of the province in which the shareholder has his residence, if there is a branch or agency of the bank in that province, and if a share-registry has been opened in that province, and the shares of such shareholder shall thereafter be transferable at such registry and not elsewhere, except as herein provided.

7. Residence Defined.—

For the purposes of this section, a shareholder shall be deemed to be resident in the province in which he has, according to the books of the bank, his post office address.

8. Agents.—

The directors shall appoint such agents for the purposes of this section as they deem necessary. 53 V., c. 31, ss. 29 and 35. Am.

Bessette vs. Brien, 21 Q. R., K. B. 132.

Shares in the capital stock of a bank have a real existence so long as the affairs of the bank are not in liquidation. Hence they can form the legal consideration of a contract, and may be transferred in payment of the price of a sale. The formalities required by sect. 43 et seq. of ch. 29 R. S. C. 1906, respecting the capacity of the transferrer and the registration in the books of the bank, affect only the relations between the shareholders and the bank.

As to the rights and obligations of the bank in regard to transfer of shares which are subject to trusts, see sec. 52.

As to the obligation to register a transmission of shares upon proper proof of the fact of transmission, see sec. 50.

If the transfer is not registered more than 60 days before the bank suspends payment, the transferrer is subject to the double liability under secs. 125 and 129.

(1) *Walsh vs. Union Bank*, 5 Q. L. R. 289 (1879).

A transfer by a father to his minor son of shares of stock in a bank, and accepted by the father in trust for his minor son, is null and void for want of legal acceptance.

(2) *Smith vs. The Bank of Nova Scotia*, 8 S. C. R. 558 (1883).

Held, that a resolution passed at a special general meeting of shareholders, authorizing a loan of such sum as might be necessary to enable the bank to resume specie payments, the shareholders agreeing to hold their shares without assigning them until the loan should be fully paid, could not bind shareholders not present at that meeting, even if it had been acted upon; and under the facts disclosed in evidence the defendant could not be deprived of his legal right under the Banking Act to transfer his shares and to have the transfer recorded in the books of the bank.

(3) *Barss vs. Bank of Nova Scotia*, 6 R. & G. (Nova Scotia) 254 (1885).

The plaintiff being the holder of a number of shares in the Bank of Liverpool sold the same to S. and forwarded to him power of attorney, authorizing the registry of the transfer. At the same time he forwarded to the manager of the bank his stock certificates to be cancelled on the transfer being registered, and notified the bank of the transfer. S. paid the consideration for the shares and received the transfer, which he forwarded to the manager, whom he requested and authorized to register his acceptance. The bank declined to register the transfer until after payment of a certain loan obtained by the Bank of Liverpool from the Bank of Nova Scotia, which had been procured in pursuance of a resolution passed at a meeting of shareholders at which plaintiff was present, and which purported to bind the shareholders to hold their shares without assigning them until the principal and interest due on such loan had been fully paid. In the meanwhile the bank retained the papers, promising that when the loan was repaid the transfer would be duly entered. Subsequently, the Bank of Liverpool became insolvent and assigned to the Bank of Nova Scotia.

Held (on the authority of *Smith vs. Bank of Nova Scotia*, 8 S. C. R. 558, there being evidence that the loan was effected on other security than the resolution, and that the resolution was never acted upon), that plaintiff was not deprived by the passage of the resolution of his legal right to transfer his shares and to have the transfer registered in the books of the bank.

44. List of Transfers.—A list of all transfers of shares registered each day in the books of the bank at the respective places where transfers are authorized, showing in each case, the parties to such transfers and the number of shares transferred, shall be made up at the end of each day.

2. For Inspection.—Such list shall be kept at the said respective places for the inspection of its shareholders. 53 V., c. 31, s. 36, Am.

45. Requirements for Valid Transfer.—All sales or transfers of shares, and all contracts and agreements in respect thereof, hereafter made or purporting to be made, shall be null and void, unless the person making the sale or transfer, or the

person in whose name or behalf the sale or transfer is made, at the time of the sale or transfer.—

(a) is the registered owner in the books of the bank of the share or shares so sold or transferred, or intended or purporting to be sold or transferred; or,

(b) has the registered owner's assent to the sale.

2. Contract to State Number.—The distinguishing number or numbers, if any, of such share or shares shall be designated in the contract of agreement of sale or transfer.

3. Purchasers without Notice.—Notwithstanding anything in this section contained, the rights and remedies under any contract of sale, which does not comply with the conditions and requirements in this section mentioned, of any purchaser who has no knowledge of such non-compliance, are hereby saved. 53 V., c. 31, s. 37.

Sec. 133 makes a contravention of this section "an offence against this act."

A bank is, however, under no obligation to distinguish its shares by numbers.

46. Sale of Shares under Execution.—When any share of the capital stock has been sold under a writ of execution, the officer by whom the writ was executed shall, within thirty days after the sale, leave with the bank an attested copy of the writ, with the certificate of such officer endorsed thereon, certifying to whom the sale has been made.

2. Transfer, How Executed.—The president, a vice-president or the general manager of the bank shall execute the transfer of the share so sold to the purchaser, but not until after all debts and liabilities to the bank of the holder of the share, and all liens in favour of the bank existing thereon, have been discharged as by this Act provided.

3. Validity.—Such transfer shall be to all intents and purposes as valid and effectual in law as if it had been executed by the holder of the said share. 53 V., c. 31, s. 38, Am.

47. Transmission of Shares.—If the interest in any share in the capital stock of any bank is transmitted by or in consequence, of,—

(a) the death, lunacy, bankruptcy, or insolvency of any shareholder; or,

(b) the marriage of a female shareholder; or,

(c) any lawful means, other than a transfer according to the provisions of this Act;

How Authenticated.—The transmission shall be authenticated by a declaration in writing, as hereinafter mentioned, or in such other manner as the directors of the bank require.

2. Declaration.—Every such declaration shall distinctly state the manner in which and the person to whom the share has been transmitted, and shall give his post office address and description, and such person shall make and sign the declaration.

3. Acknowledgment.—The person making and signing the declaration shall acknowledge the same before a judge of a court of record, or before the mayor, provost or chief magistrate of a city, town, borough or other place, or before a notary public, or a commissioner for taking affidavits, where the same is made and signed.

4. To be Left with Bank.—Every declaration so signed and acknowledged shall be left with the general manager, or other officer or agent of the bank, who shall thereupon enter the name of the person entitled under the transmission in the register of shareholders.

5. Exercise of Rights as Shareholder.—Until the transmission has been so authenticated, no person claiming by virtue thereof shall be entitled to participate in the profits of the bank, or to vote in respect of any such share of the capital stock. 53 V., c. 31, s. 39, Am.

“Transmission” in this and the next following sections is used in contradistinction to “transfer.” The latter means a transfer by the act of the holder, the former a transmission by devolution of law.

Two of the cases of transmission mentioned in this section, namely, the death of a shareholder and the marriage of a female shareholder, are further provided for by secs. 48, 0 and 51.

A bank cannot refuse to record a transmission of shares on the ground of any indebtedness or liability to the bank within sec. 43.

See sec. 49 as to the authentication of a declaration made under this section.

The bank is not obliged to see to the execution of trusts by the person to whom the shares are transmitted. See sec. 52.

48. Transmission by Marriage of Female Shareholder.—Declaration.—If the transmission of any share of the capital stock has taken place by virtue of the marriage of a female shareholder, the declaration shall be accompanied by a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife, with the holder of such share, and shall be made and signed by such female shareholder and her husband.

2. If Separate Property of Wife.—The declaration may include a statement to the effect that the share transmitted is the separate property and under the sole control of the wife and that

she may, without requiring the consent or authority of her husband, receive and grant receipts for the dividends and profits accruing in respect thereof, and dispose of and transfer the share itself.

3. **Revocation.**—The declaration shall be binding upon the bank and persons making the same, until the said persons see fit to revoke it by a written notice to the bank to that effect.

4. **Omission not to Invalidate.**—The omission of a statement in any such declaration that the wife making the declaration is duly authorized by her husband to make the same shall not invalidate the declaration. 53 V., c. 21, s. 40.

The provisions of this section are supplementary to those of sec. 47.

See next section as to the authentication of a declaration made under this section.

49. **Authentication of Declaration and Papers in Certain Cases.**—Every such declaration and instrument as are by the last two preceding sections required to perfect the transmission of a share in the bank shall, if made in any country other than Canada, the United Kingdom or a British colony,—

(a) be further authenticated by the clerk of a court of record under the seal of the court, or by the British consul or vice-consul, or other accredited representative of His Majesty's Government in the country where the declaration or instrument is made; or

(b) be made directly before such British consul, vice-consul or other accredited representative.

2. **Further Evidence.**—The directors, general manager or other officer or agent of the bank may require corroborative evidence of any fact alleged in any such declaration. 53 V., c. 31, s. 39, Am.

50. **Transmission by Will or Intestacy.**—If the transmission has taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will, or the letters of administration or act of curatorship or tutorship, or an official extract therefrom, shall, together with the declaration, be produced and left with the general manager or other officer or agent of the bank.

2. **Entry.**—The general manager or other officer or agent shall thereupon enter in the register of shareholders the name of the person entitled under the transmission. 53 V., c. 31, s. 41, Am.

See notes to next section.

51. **Transmission by Decease.**—Notwithstanding anything in this Act, if the transmission of any share of the capital stock has

taken place by virtue of the decease of any shareholder, the production to the directors and the deposit with them of—

(a) any authenticated copy of the probate of the will of the deceased shareholder, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in England, Wales, Ireland, or any British colony, or of any testament, testamentary or testament dative expedé in Scotland; or,

(b) an authentic notarial copy of the will of the deceased shareholder, if such will is in notarial form according to the law of the province of Quebec; or,

(c) if the deceased shareholder died out of His Majesty's dominions, any authenticated copy of the probate of his will or letters of administration of his property, or other document of like import, granted by any court or authority having the requisite power in such matters;

shall be sufficient justification and authority to the directors for paying any dividend, or for transferring or authorizing the transfer of any share, in pursuance of and in conformity to the probate, letters of administration, or other such document as aforesaid. 53 V., c. 31, s. 42, Am.

The provisions of this section and of section 50 are supplementary to those of 47.

(1) *Boyd vs. Bank of New Brunswick*, New Brunswick Equity Cases 545 (1891).

Under the Bank Act a bank cannot refuse to register a transfer to a purchaser by an executor of shares in the bank standing in the name of the testator, though by the testator's will the shares are specifically bequeathed.

(2) *Heecker vs. Bank of Montreal*, R. J. J., 7 S. C. 257 (1895).

Section 1 of 55-56 V., Quebec, c. 17, enacting R. S. Q. 1191 d, sub-section 5, provides, that "No transfer of the properties of any estate or succession shall be valid, nor shall any title vest in any person, if the taxes payable under this section have not been paid; and no executor, trustee, administrator, curator, heir or legatee shall consent to any transfers or payments of legacies unless the said duties have been paid."

Held, the above provision is *ultra vires* of the Provincial Legislature, and a bank is therefore justified in refusing to register a transfer of shares by executors under a will, until proof is offered that the duties payable under the act above cited have been paid.

(3) *Donohue vs. La Banque Jacques Cartier*, R. J. Q., 11 S. C. 90 (1896).

Notwithstanding the fact that the sale of shares of bank stock belonging to an absent minor was made while the minor was not properly represented, such sale, when subsequently ratified by a person legally entitled to represent the minor, will not be set aside at the suit of the minor after becoming of age,—more especially where it is proved that the proceeds of the sale of shares were applied for the benefit of the minor's estate, and were entered in the account

rendered by the testamentary executors and duly accepted by the tutor.

(4) *Lambe vs. Manuel, R. J. O.*, 17 S. C. 184 (1900).

Held, in order that personal property should be liable for Quebec succession duties, it is necessary that it should be situate within that Province, and as property of a moveable nature accompanies, in construction of law, the person of its owner, the situation of the owner's domicile at the time of his death, and not the actual local situation of the personal property itself, is the true test of its liability to duty. Hence in the present case, where the deceased was domiciled in Ontario and died there, personal property, consisting of bank shares and money lent, although actually situated in the Province of Quebec, was not chargeable with succession duty in that Province under the Act 55-56 Vict., ch. 17, as amended by 57 Vict., ch. 16.

This judgment was confirmed on appeal to the Court of King's Bench of the Province of Quebec, on the 1st March, 1901, that Court holding that the succession devolved in Ontario, and movable property, although locally situated in the Province of Quebec at the time of the death of the testator, was constructively held to be situate in Ontario under the rule *mobilia sequuntur personam*.

This judgment was confirmed in the Privy Council:

Lambe vs. Manuel, L. R. (1903), A. C., 68.

Held, that taxes imposed on moveable property by the Quebec Succession Duty Act of 1892 and the amending Acts apply only to property which the successor claims under or by virtue of Quebec law; and have no application to the several items in this case, which formed part of a succession devolving under the law of Ontario.

SHARES SUBJECT TO TRUSTS.

52. Bank not Bound to see to Trusts.—The bank shall not be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any share of its stock is subject.

2. Receipt.—The receipt of the person in whose name any such share stands in the books of the bank, or, if it stands in the names of more persons than one, the receipt of one of such persons shall be a sufficient discharge to the bank for any dividend or any other sum of money payable in respect of such share, unless, previously to such payment, express notice to the contrary has been given to the bank.

3. Bank not Bound.—The bank shall not be bound to see to the application of the money paid upon such receipt, whether given by one of such persons or all of them. 53 V., c. 31, s. 43.

This section refers only to trusts in regard to shares of the bank's own capital stock. It has no reference to trusts in respect of shares of other corporations taken by the bank as collateral security; see sec. 76, *infra*. For full discussion of sec. 52, see Falconbridge p. 98.

By sec. 96, a bank is not bound to see to the execution of any trust to which any deposit is subject.

(1) *Muir vs. Carter* (1889), 16 S. C. R., 473.

The fact of bank shares being purchased in trust at a time when the trustee was solvent imports an interest in somebody else, and the onus is upon a party who has seized such shares to prove that they are in fact the property of the trustee, and as such available to satisfy the demand of his creditors. (*Sweeney vs. Bank of Montreal*, 12 App. Cas., 617 followed.)

(2) *Simpson vs. Molsons Bank* (1895), A. C. 270.

Where a statute incorporating a bank provides that "the bank shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any of the shares of the bank may be subject," such provision must relate to, and free the bank from, liability for trusts of which the bank had knowledge or notice, as the bank could not, apart from the statute, incur liability by not seeing to the execution of a trust of which they had no knowledge.

But assuming that the bank would be liable if it were shown that they were possessed of actual notice of the trust, the facts (1) that a copy of the testator's will was in the possession of the bank; (2) that in the case of three of the testator's children, notice of the substitution of grandchildren was contained in the transfer registered by the executors in the bank's books on a previous occasion; (3) that one of the executors was president of the bank, and that the law agent of the executors was also law agent of the bank, are not sufficient to prove that the bank have received notice of the trust.

53. Executor or Trustee not Personally Liable.—No person holding stock in the bank as executor, administrator, guardian, trustee, tutor or curator—

(a) of or for any estate, trust or person named in the books of the bank as being represented by him, or

(b) if the will or other instrument under or by virtue of which the stock is so held be named in the books of the bank in connection with such holding,

shall be personally subject to any liability as a shareholder; but the estate and funds in his hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such estate and funds would be, if living and competent to hold the stock in his own name.

2. "Cestui Que Trust" Liable.—If the trust is for a living person or corporation, such person or corporation shall also be liable as a shareholder to the extent of his or its respective interest in the shares.

3. Executor or Trustee Liable if Trust not Named.—If the estate, trust or person so represented, or will or other instrument, is not named in the books of the bank, the executor, administrator, guardian, trustee, tutor or curator shall be personally liable in respect of the stock, as if he held it in his own name as owner thereof. 63-64 V., c. 26, s. 8, Am.

A loan company which advances money on the security of bank

shares which are transferred to it and accepted by it, in the ordinary absolute form, cannot escape liability on the ground that it is merely a trustee for the borrower. (*In re Central Bank, Home Savings & Loan Co.'s Case* 1891, 18 A. R. 489).

ANNUAL AND SPECIAL STATEMENTS.

54. Statement to be laid before Annual Meeting.—At every annual general meeting of the shareholders for the election of directors, the outgoing directors shall submit a clear and full statement of the affairs of the bank, exhibiting on the one part, the liabilities of the bank, and, on the other part, the assets and resources thereof, and the statement shall be signed by the general manager or other principal officer of the bank next in authority in the management of the affairs of the bank at the time at which the statement is signed, and shall be signed on behalf of the board by the president or vice-president or any other two directors, neither of whom shall be an officer of the bank.

2. Liabilities—Assets.—The statement shall, without restricting the generality of the requirement of the next preceding subsection, include and show, on the one part, the amount of the—

- (a) capital stock paid in,
 - (b) rest or reserve fund,
 - (c) dividends declared and unpaid,
 - (d) balance of profits, as per profit and loss account referred to in subsection 4 of this section,
 - (e) notes of the bank in circulation,
 - (f) deposits not bearing interest,
 - (b) deposits bearing interest, including interest accrued to date of statement,
 - (h) balances due to other banks in Canada,
 - (i) balances due to banks and banking correspondents in the United Kingdom and foreign countries,
 - (j) bills payable,
 - (k) acceptances under letters of credit,
 - (l) liabilities not included in the foregoing;
- and the statement shall include and show, on the other part, the amount of—

- (a) current coin held by the bank,
- (b) Dominion notes held,
- (c) notes of other banks,
- (d) cheques on other banks,
- (e) balances due by other banks in Canada,
- (f) balances due by banks and banking correspondents elsewhere than in Canada.

(g) Dominion and provincial government securities, not exceeding market value,

(h) Canadian municipal securities, and British, foreign and colonial public securities other than Canadian.

(i) railway and other bonds, debentures and stocks, not exceeding market value.

(j) call and short (not exceeding thirty days) loans in Canada on bonds, debentures, and stocks.

(k) call and short (not exceeding thirty days) loans elsewhere than in Canada.

(1) other current loans and discounts in Canada (less rebate of interest _____),

(m) other current loans and discounts elsewhere than in Canada (less rebate of interest _____),

(u) liabilities of customers under letters of credit as per contra.

(o) real estate other than bank premises,

(p) overdue debts, estimated loss provided for.

(g) bank premises, at not more than cost, less amounts (if any) written off,

(r) deposit with the Minister for the purposes of the Circulation Fund,

(s) deposit in the central gold reserve.

(t) other assets not included in the foregoing.

3. **Other Particulars.**—Any other or further particulars than those called for by subsection 2 of this section, which, in the opinion of the directors, are necessary to a full and clear statement of the affairs of the bank shall also be included and shown in such statement.

4. **Profit and Loss Account.**—A profit and loss account for the financial year of the bank next preceding the date of the annual general meeting shall accompany the statement and be attached thereto, and shall be signed on behalf of the board by the same persons as are required by this section to sign the statement referred to.

5. Copies of Statement to be Sent to Shareholders and Ministers.—A copy of the statement and of the profit and loss account, together with a copy of the minutes of the annual general meeting, shall be sent within four weeks thereafter to each shareholder at his last known post office address, as shown by the books of the bank, and a copy of each of these shall be sent to the Minister. 53 V., c. 21, s. 45. Am.

Farmers Bank vs. Todd, 19 O. W. R. 703, 2 O. W. N. 1389 following *Donogh vs. Gillespie*, 21 O. R. 292.

Power of banks to substitute their liability as debtor. Award of arbitrators.

As to the annual and other meetings of the shareholders, see notes to sec. 13.

See sec. 153 as to the liability for the making of a false statement.

55. Further Statements as Required by By-Law.—The directors shall also submit to the shareholders such further statements of the affairs of the bank as the shareholders require by by-law passed at the annual general meeting, or at any special general meeting of the shareholders called for the purpose.

2. When to be Submitted.—The statements so required shall be submitted at the annual general meeting, or at any special general meeting called for the purpose, or at such time and in such manner as is set forth in the by-law of the shareholders requiring such statements. 63-64 V., c. 26, s. 9, Am.

Cf. sec. 113, conferring power on the Minister of Finance to call for special returns in addition to the regular monthly returns required by sec. 112.

See sec. 153, as to the liability for the making of a false statement.

SHAREHOLDERS' AUDIT.

56. Selection of Persons Competent to be Auditors.—The general managers of the banks (or in the absence of a general manager of any bank the official designated by him, or in default of such designation the principal officer of the bank next in authority) shall, at a meeting duly called by the president of the Association for the purpose before the thirtieth day of June in each year, select by ballot persons deemed by them to be competent (no one of whom shall be a body corporate) not less than forty in number, any one of whom shall, subject to the provisions hereinafter contained, be eligible to be appointed an auditor under the provisions of this Act.

2. List to be Sent to Minister.—A list of persons so selected, together with their post office addresses and occupations, shall forthwith be delivered or sent by registered post to the Minister, and the Minister may, in the case of the first selection, as hereinbefore provided, within ten days after the receipt of the list, and thereafter each year within sixty days after the receipt thereof, disapprove, as to eligibility to be appointed auditor of a particular bank or banks, or wholly disapprove, of the selection of any person named in the list, and such person shall not, to the extent of such disapproval, be qualified to be appointed an auditor under this section.

3. Disapproval, if Any.—The Minister shall communicate his disapproval, if any, to the Association.

4. Publication in "Canada Gazette."—The Association shall, as soon as may be after the expiry of the time given to the Minister for disapproval, cause the list of persons qualified as hereinbefore provided, with their respective post office addresses and occupations, to be published in two successive issues of "The Canada Gazette," and any limitation as to eligibility for the auditorship of a particular bank or banks of the persons named in the list shall be stated in the advertisement.

5. Qualification of Auditors.—No person shall be qualified to act as an auditor of a bank under this Act unless his name appears in the published list for the year, but this subsection shall not apply to an appointment of an auditor made by the Minister in pursuance of the provisions of this Act.

6. Appointment of Auditors.—The shareholders shall, at each annual general meeting, appoint an auditor or auditors, from the last published list of persons qualified, to hold office until the next annual general meeting.

7. Supersession of Auditors.—After the appointment of an auditor or auditors under the next preceding subsection of this section, shareholders, the aggregate of whose paid-up capital stock is equal to at least one-third of the paid-up capital stock of the bank, who in writing under their respective hands allege that they are dissatisfied with the appointment so made, may, in and by the same writing, make application to the Minister to have the person or persons so appointed superseded, and the Minister may, after such inquiry as he may deem necessary, select an auditor or auditors instead of the auditor or auditors appointed at the annual general meeting, and the auditors so appointed shall thereupon cease to be the auditors of the bank and the auditors so selected shall be the auditors of the bank until the next annual general meeting.

8. Appointment by Minister on Application of Shareholder.—If an appointment of auditors is not made at an annual general meeting, the Minister shall, on the written application of a shareholder, appoint an auditor or auditors of the bank to hold office until the next annual general meeting, and the Governor in Council shall fix the remuneration to be paid by the bank for the services of the auditor or auditors so appointed.

9. Officers Disqualified.—A director or officer of the bank shall not be capable of being appointed auditor of the bank.

10. Notice Required of Intention to Nominate Auditor—Retiring Auditor Notified—Notice to Shareholders.—A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless written notice of an intention to nominate that person to the office of auditor

has been given by a shareholder to the bank at its chief office, not less than twenty-one days before the annual general meeting, and the bank shall deliver a copy of any such notice to the retiring auditor, if any, and shall give notice of the names of the persons eligible for nomination at the said meeting, and by whom such persons are respectively intended to be nominated, to every shareholder of the bank, by mailing the notice in the post office, post paid, to the last known post office address of the shareholder as shown by the records of the bank, at least fourteen days prior to the annual general meeting.

11. Vacancies—Special Meeting.—If any casual vacancy occurs in the office of auditor, the surviving or continuing auditor or auditors, if any, may act, but if there is no surviving or continuing auditor, and such vacancy has occurred more than three months before the annual general meeting, the directors shall, as hereafter in this section provided, call a special general meeting of the shareholders for the purpose of filling the vacancy.

12. Public Notice by Advertisement.—Before calling such special general meeting, the directors shall, as soon as may be after the vacancy occurs, give public notice by advertisement in six consecutive issues of one or more daily newspapers published in the place where the chief office of the bank is situate, and if no daily newspaper is published at that place, then by advertisement in two consecutive issues of a newspaper published weekly in that place, of the vacancy in the office of auditor, and that the vacancy will be filled in the manner provided by this Act.

13. Notice of Nomination to Fill Vacancy.—A person shall not be capable of being appointed auditor to fill such vacancy unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the bank at its chief office within ten days after the last publication of the notice called for by the next preceding subsection.

14. Special General Meeting—Notice to Shareholders.—The directors shall, as soon as may be after the expiry of the ten days mentioned in the next preceding subsection, call a special general meeting of the shareholders for the purpose of filling the vacancy, and notice of such meeting, specifying the object, and stating the names of the persons eligible for nomination, and by whom such persons are respectively intended to be nominated, shall be given to every shareholder of the bank by mailing the notice in the post office, post paid, to the last known post office address of the shareholder as shown by the records of the bank, at least fourteen days prior to the date fixed for the meeting.

15. Appointment of Auditor by Minister in Case of Vacancy.—If the vacancy contemplated by subsection 11 of this section is not filled in the manner provided, or if a casual vacancy occurs

in the office of auditor less than three months before the annual general meeting, the Minister in the former case shall, and in the latter case may, on the written application of a shareholder, appoint an auditor or auditors to hold office until the next annual general meeting, and the Governor in Council shall fix the remuneration to be paid by the bank for the services of the auditor or auditors so appointed.

16. Remuneration.—The remuneration of auditors appointed by the shareholders shall be fixed by the shareholders at the time of their appointment, and in the event of such appointees being superseded and other auditors selected, as provided by subsection 7 of this section, the remuneration so fixed shall be divided between them according to the length of time they respectively are auditors of the bank.

17. Powers and Rights of Auditors.—Every auditor of a bank shall have a right of access to the books and accounts, cash, securities, documents and vouchers of the bank, and shall be entitled to require from the directors and officers of the bank such information and explanation as may be necessary for the performance of the duties of the auditors.

18. Audit of Branches or Agencies.—If the bank has branches or agencies it shall be sufficient for all the purposes of this section if the auditors are allowed access to the returns, reports and statements and to such copies of extracts from the books and accounts of any such branch or agency as have been transmitted to the chief office, but the auditors may in their discretion visit any branch or agency for the purpose of examining the books and accounts, cash, securities, documents and vouchers at the branch or agency.

19. Duty of Auditors to Check Cash and Verify Securities.—It shall be the duty of the auditors once at least during their term of office, in addition to such checking and verification as may be necessary for their report upon the statement submitted to the shareholders under section 54 of this Act, and at a different time, to check the cash and verify the securities of the bank at the chief office of the bank against the entries in regard thereto in the books of the bank, and, should they deem it advisable, to check and verify in the same manner the cash and securities at any branch or agency.

20. Report of Auditors to Shareholders—Particulars.—The auditors shall make a report to the shareholders—

(a) on the accounts examined by them;

(b) on the checking of cash and verification of securities referred to in the next preceding subsection; and,

(c) on the statement of the affairs of the bank submitted

by the directors to the shareholders under section 54 of this Act during their tenure of office:
and the report shall state—

(a) whether or not they have obtained all the information and explanation they have required;

(b) whether, in their opinion, the transactions of the bank which have come under their notice have been within the powers of the bank;

(c) whether their checking of cash and verification of securities required by subsection 19 of this section agreed with the entries in the books of the bank with regard thereto; and,

(d) whether, in their opinion, the statement referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the bank's affairs according to the best of their information and the explanations given to them, and as shown by the books of the bank.

21. Attached to Annual Statement and Read.—The auditors' report shall be attached to the statement submitted by the directors to the shareholders under section 54 of his Act, and the report shall be read before the shareholders in the annual general meeting.

22. Audit and Report on Further Statements—Particulars.
—Any further statement of the affairs of the bank submitted by the directors to the shareholders under section 55 of this Act shall be subject to audit and report, and the report of the auditors thereon shall state—

(a) whether or not they have obtained the information and explanation they have required;

(b) whether, in their opinion, such further statement is properly drawn up so as to exhibit a true and correct view of the affairs of the bank, in so far as the by-law requires a statement thereof, according to the best of their information and the explanations given to them, and as shown by the books of the bank.

23. Attached to Statement and Read—Copies.—The report shall be attached to the further statement referred to in the next preceding subsection, and shall be read before the shareholders at the meeting to which such further statement is submitted, and a copy of the statement and report shall be sent by the directors at and after the meeting to any shareholder applying therefor.

AUDITORS' REPORT TO MINISTER.

56a. Examination by Auditor Appointed by Minister.—The Minister may direct and require any auditor appointed under the next preceding section of this Act or any other auditor whom he may select to examine and inquire specially into any of the affairs

or business of the bank, and the auditor so appointed or selected, as the case may be, shall, at the conclusion of his examination and inquiry, report fully to the Minister the results thereof.

2. Powers of Auditor.—For the purposes of this section the auditor appointed or selected as aforesaid shall have all the rights and powers given to an auditor under the next preceding section.

3. Remuneration.—For the performance of the duties imposed by this section, the auditor shall be paid as remuneration, out of the Consolidated Revenue Fund, such sum as the Governor in Council may direct.

4. To be Deemed Auditor of Bank.—The person selected by the Minister under this section shall, for the purposes of section 153 of this Act, be deemed to be an auditor of the bank.

DIVIDENDS.

57. Quarterly or Half-Yearly Dividends.—The directors of the bank shall, subject to the provisions of this Act, declare quarterly or half-yearly dividends of so much of the profits of the bank as to the majority of them seems advisable.

2. Notice.—The directors shall give public notice, published for at least four weeks, of the payment of such dividends previously to the date fixed for such payment.

3. Where Payable.—Dividends shall, on and after the date fixed for payment, be payable at the chief office of the bank, and at such of its branches, and at such other places as the directors prescribe.

4. Books Closed.—The directors may close the transfer books during a certain time, not exceeding fifteen days, before the payment of each dividend.

5. Liability of Bank—No Prescription.—The liability of any bank under any law, custom or agreement to pay dividends heretofore or hereafter declared and payable on its capital stock shall continue notwithstanding any statute of limitations or any enactment or law relating to prescription. 53 V., c. 31; ss. 47, 90; R. S., c. 29, ss. 36 (4) 126. Am.

PUBLIC NOTICE.—The nature of this is prescribed by sec. 2, subsec. 2.

Sec. 57 authorizes the payment of dividends out of profits, sec. 58 prohibits their payment so as to impair the paid-up capital, and sec. 59 forbids their being paid to an amount exceeding 8 per cent. per annum unless a certain rest or reserve fund is maintained. The provisions of secs. 58 and 59 expressly apply to bonuses as well as dividends. A bonus is merely an extra dividend or allowance to the shareholders, and the power to declare a bonus is covered by the power to declare a dividend given to the directors by sec. 57.

58. Dividend not to Impair Capital.—No dividend or bonus shall be declared so as to impair the paid-up capital of the bank.

2. Directors Liable for such Dividend.—The directors who knowingly and wulfully concur in the declaration or making payable of any dividend or bonus, whereby the paid-up capital of the bank is impaired, shall be jointly and severally liable for the amount of such dividend or bonus, as a debt due by them to the bank. 53 V. c. 31, s. 48.

No dividend or bonus is to be declared so as to impair the paid-up capital. If the capital is impaired, then all the net profits are to be applied to make up the loss, and in addition to this calls are to be made upon unpaid subscribed stock to an amount equivalent to the loss (sec. 39).

59. Dividend Limited unless there is a Certain Reserve.—No division of profits, either by way of dividends or bonus, or both combined, or in any other way, exceeding the rate of eight per cent. per annum, shall be made by the bank, unless, after making the same, the bank has a rest or reserve fund, equal to at least thirty per cent. of its paid-up capital after deducting all bad and doubtful debts. 53 V., c. 31, s. 49.

CASH RESERVES.

60. Cash Reserves in Dominion Notes.—The bank shall hold in Dominion notes not less than forty per cent. of the cash reserves which it has in Canada.

2. Supply of Dominion Notes.—The Minister shall make such arrangements as are necessary for ensuring the delivery of Dominion notes to any bank, in exchange for an equivalent amount of gold coin lawfully current at the several branch offices of the Department of Finance at which Dominion notes are redeemable, in Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria, Charlottetown, Regina and Calgary respectively.

3. Redemption.—Such notes shall be redeemable at any of the branch offices mentioned in subsection 2 hereof. 53 V., c. 31, s. 50. Am.

61. Issue of Notes—Proviso.—The bank may issue and re-issue its notes payable to bearer on demand and intended for circulation: Provided that,—

(a) The bank shall not, during any period of suspension of payment of its liabilities, issue or re-issue any of its notes; and,

(b) If, after any such suspension, the bank resumes business without the consent in writing of the curator, hereinafter provided for, it shall not issue or re-issue any of its notes until authorized by the Treasury Board so to do.

2. **\$5, or Multiples.**—No such note shall be for a sum less than five dollars, or for any sum which is not a multiple of five dollars.

3. **Amount Limited.**—Except as hereinafter provided, the total amount of the notes of a bank in circulation at any time shall not exceed the aggregate of—

(a) the amount of the unimpaired paid-up capital of the bank; and

(b) the amount of current gold coin and of Dominion notes held for the bank in the central gold reserves hereinafter mentioned.

4. **Appointment of Trustees—Central Gold Reserves.**—The Association may, with the approval of the Minister, appoint three trustees and the Minister may appoint a fourth trustee, and the trustees so appointed shall receive such amounts in current gold coin and Dominion notes, or either, as any bank may desire from time to time to deposit with them. The amounts so deposited are herein referred to as “central gold reserves” and shall be held and dealt with in accordance with the provisions of this Act.

5. **By-Laws Respecting.**—The Association may make by-laws, rules and regulations under section 124 of this Act respecting the custody and management of the central gold reserves and the carrying out of the provisions of this Act relating to such reserves.

6. **Excess of Notes Over Paid-Up Capital.**—When and so long as the amount of the notes of a bank in circulation in excess of its unimpaired paid-up capital is less than the amount deposited by it in the central gold reserves, the excess of the amount so deposited shall belong to the bank as its property, and the bank may apply to the trustees for a return of the excess last mentioned, and upon receiving from the bank a statement signed by the chief accountant and by the general manager or other principal officer next in authority in the management of the affairs of the bank at the time the statement is signed, and otherwise in the form provided by said by-laws, rules or regulations, setting forth to the best of the information and belief of these officers the amount of the notes of the bank in circulation on the date of such statement, the trustees shall return the whole or part of the deposit of the bank, as the case may be. On and from the date when such statement is transmitted by registered post or delivered to the trustees, the amount applied for shall, for the purpose of the statement to be made by the trustees to the Minister under sub-section 7 of this section, and for the purpose of calculating the total amount of the authorized note circulation of the bank, be deemed to have been withdrawn from the central gold reserves and shall not be taken into account in

such statement nor included in such calculation; provided always that should the total amount of the notes of the bank in circulation be found by reason of such withdrawal to be in excess of the circulation of the bank authorized by this Act the bank shall not be deemed to be released or relieved from any of the penalties imposed by this Act for circulation of the notes of a bank in excess of the amount authorized by this Act.

7. Statement to be Sent to Minister.—The trustees shall prepare and transmit by registered post or deliver to the minister within the first twenty days of each month a statement to be signed by them showing the amount on each juridical day of the preceding month of the deposit of each bank in the central gold reserves and not withdrawn or deemed to be withdrawn under the provisions of this section.

8. Inspection and Audit of Gold Coin and Notes.—The Minister shall, from time to time, and not less frequently than twice in each year, cause an inspection and audit of the gold coin and Dominion notes held by the trustees to be made by officers of the Department of Finance.

9. Particulars of Inspection.—It shall be the duty of such officers—

(a) to inspect and ascertain the amount of the gold coin and Dominion notes held by the trustees for the respective banks at the date of inspection; and

(b) to ascertain from the books and accounts, documents and vouchers of the trustees the amounts of gold coin and Dominion notes held by the trustees for the respective banks at any preceding date named by the Minister.

10. Powers of Inspecting Officer.—Every such officer shall have a right of access to the gold and Dominion notes held and to the books and accounts, documents and vouchers of the trustees, and shall be entitled to require from the trustees such information and explanation as may be necessary for the performance of his duties.

11. When Bank Insolvent.—Should the bank become insolvent within the meaning of this Act, the amount held for it in the central gold reserves shall be paid by the trustees to the liquidator or other person entitled by law to collect and receive the assets of the bank and shall be applied in redeeming the notes of such bank in circulation and for no other purpose, or in making the payment to the Minister required by section 116 of this Act.

12. Vacancy in Office of Trustee.—When a vacancy in the office of a trustee appointed by the Association occurs, by resignation, death or other cause, the trustee to fill the vacancy shall, subject to the approval of the Minister, be appointed by the Asso-

ciation; and when a vacancy occurs in the office of a trustee appointed by the Minister, the trustee to fill the vacancy shall be appointed by the Minister.

13. Remuneration of Trustees.—The remuneration of trustees, including that of the trustee appointed by the Minister, and all charges and expenses incidental to the establishment and maintenance of the central gold reserves, shall be borne by the Association as the Association may, by by-law, rule or regulation determine.

14. Additional Issue during Moving of Crops.—During the usual season of moving the crops, that is to say, from and including the first day of September in any year to and including the last day of February next ensuing in addition to the said amount of notes hereinbefore authorized to be issued for circulation, the bank may issue its notes to an amount not exceeding fifteen per cent. of the combined unimpaired paid-up capital and rest or reserve fund of the bank as stated in the statutory monthly return made by the bank to the Minister for the month immediately preceding that in which the additional amount is issued.

15. Notice of Additional Issue.—Whenever, under the authority of the next preceding subsection of this section, the issue of an additional amount of notes of the bank has been made, the general manager, or other principal officer next in authority in the management of the affairs of the bank for the time being, shall forthwith give notice thereof by registered letter addressed to the Minister and to the president of the Association.

16. Interest on Additional Issue.—While its notes in circulation are in excess of the aggregate referred to in subsection 3 of this section, the bank shall pay interest to the Minister at such rate, not exceeding five per cent. per annum, as is fixed by the Governor in Council, on the amount of its notes in circulation in excess from day to day; and the interest so paid shall form part of the Consolidated Revenue Fund.

17. Return by Bank.—A return shall be made and sent by the bank to the Minister showing the amount of its notes in circulation for each juridical day during any month in which any amount of notes in excess of the amount of the unimpaired paid-up capital of the bank has been issued or is outstanding.

18. Time and Form of Return—Signatures thereto.—Such return shall be made up and sent within the first thirty days after the last day of the month in which any such amount in excess has been issued or is outstanding, and shall be accompanied by declarations which shall be a part of the return, and the declarations shall be in the form set forth in Schedule E to this Act, and shall be signed by the chief accountant, and by the president.

or a vice-president, or the director then acting as president, and by the general manager or other principal officer next in authority in the management of the affairs of the bank at the time at which the declaration is signed.

19. Bank of British North America.—Notwithstanding anything in this section hereinbefore contained, the total amount of such notes of the Bank of British North America in circulation at any time shall not exceed the aggregate of seventy-five per cent. of the unimpaired paid-up capital of the bank, and the amount of current gold coin and of Dominion-notes held by the Bank in the central gold reserves; provided that the Bank may, in lieu of current gold coin and Dominion notes, deposit with the trustees securities of the Dominion of Canada to an amount (taken at a valuation not greater than market value) not exceeding twenty-five per cent. of the unimpaired paid-up capital of the Bank, and such deposit of securities to the extent thereof shall be deemed to be, for the purposes of this section, a deposit of current gold coin and Dominion notes held by the trustees in the central gold reserves and shall be available in the event of the suspension of payment by the Bank for the redemption of the notes of the Bank.

20. Issue of Notes of Bank of B. N. A. during Moving of Crops.—The last mentioned Bank may, during the said season of moving of crops, in addition to the circulation of its notes hereinbefore in the next preceding subsection of this section authorized, issue its notes to an amount not exceeding ten per cent. of the combined unimpaired paid-up capital and rest or reserve fund of the Bank as stated in the statutory return made by the Bank for the month immediately preceding that in which the said additional amount is issued; and the said additional amount shall be otherwise subject to all the provisions of this section respecting circulation in addition to or in excess of the unimpaired paid-up capital permitted to other banks. 53 V., c. 31, s. 51; 63-64 V., c. 26, s. 10; 7-8 E. VII., c. 7, s. 1; 2 G. V., c. 5, s. 4. Am.

62. Note Issue at Agency in British Possessions other than Canada.—Notwithstanding the provisions of the last preceding section any bank may issue and re-issue, at any branch, agency or office of the bank in any British colony or possession other than Canada notes of the bank payable to bearer on demand and intended for circulation in such colony or possession, for the sum of one pound sterling each, or for any multiple of such sum, or for the sum of five dollars each, or for any multiple of such sum, of the dollars in commercial use in such colony or possession, if the issue or re-issue of such notes is not forbidden by the laws of such colony or possession.

2. Governor in Council to Fix Rate for Circulation.—No

issue of notes of the denomination of five such dollars, or any multiple thereof, shall be made in any such British colony or possession unless and until the Governor in Council, on the report of the Treasury Board, determines the rate, in Canadian currency, at which such notes shall be circulated as forming part of the total amount of the notes in circulation within the meaning of the last preceding section.

3. **Redemption.**—The notes so issued shall be redeemable at par at any branch, agency or office of the bank in the colony or possession in which they are issued for circulation, and not elsewhere, except as in this section specially provided; and the place of redemption of such notes shall be legibly printed or stamped across the face of each note so issued.

4. **Redemption if Agency is Abolished.**—In the event of the bank ceasing to have a branch or agency or office in any such British colony or possession, all notes issued in such colony or possession under the provision of this section shall become payable and redeemable at the rate of four dollars and eighty-six and two-thirds cents per pound sterling, or, in the case of the issue of notes of the denomination of five dollars, or any multiple thereof, of the dollars in commercial use in such colony or possession, at the rate established by the Governor in Council as required by this section, in the same manner as notes of the bank issued in Canada are payable and redeemable.

5. **Total Amount of Circulation.**—The amount of the notes at any time in circulation in any such colony or possession, issued under the provisions of this section, shall, at the rate mentioned in the last preceding subsection, form part of the total amount of the notes in circulation within the meaning of the last preceding section, and, except as herein otherwise specially provided, shall be subject to all the provisions of this Act.

6. **No Re-Issue in Canada.**—No notes issued for circulation in a British colony or possession other than Canada shall be re-issued in Canada.

7. **Section Limited.**—Nothing in this section shall be construed to authorize any bank.—

(a) to increase the total amount of its notes in circulation in Canada and elsewhere beyond the limit fixed by the last preceding section; or

(b) to issue or re-issue in Canada notes payable to bearer on demand, and intended for circulation, for a sum less than five dollars, or for a sum which is not a multiple of five dollars. 4 E. VII., c. 3, ss. 1, 2, 3 and 4.

63. **Pledge of Notes Prohibited.**—The bank shall not pledge, assign, or hypothecate its notes; and no advance or loan made on

the security of the notes of a bank shall be recoverable from the bank or its assets. 53 V., c. 31, s. 25.

This section is enforced by penalty under sec. 140.

64. Bank Circulation Redemption Fund Continued.—The moneys heretofore paid to and now deposited with the Minister by the banks to which this Act applies, constituting the fund known as the Bank Circulation Redemption Fund, shall continue to be held by the Minister for the purposes and subject to the provisions in this section mentioned and contained.

2. \$5,000 to be Retained upon Issue of Certificate.—The Minister shall, upon the issue of a certificate under this Act authorizing a bank to issue notes and commence the business of banking, retain, out of any moneys of such bank then in his possession, the sum of five thousand dollars, which sum shall be held for the purposes of this section, until the annual adjustment hereinafter provided for takes place in the year then next following.

3. Adjustment—Five per cent. of Average Circulation.—The amount at the credit of such bank shall, at such next annual adjustment, be adjusted by payment to or by the bank of such sum as is necessary to make the amount of money at the credit of the bank equal to five per cent. of the average amount of its notes in circulation from the time it commenced business to the time of such adjustment and such sum shall thereafter be adjusted annually as hereinafter provided.

4. Circulation Fund.—The amounts heretofore and from time to time hereafter paid, to be retained and held by the Minister as by this section provided, shall continue to form and shall form the Circulation Fund.

5. Its Purposes.—The Circulation Fund shall continue to be held as heretofore for the sole purpose of payment, in the event of the suspension by a bank of payment in specie or Dominion notes of any of its liabilities as they accrue, of the notes then issued or re-issued by such bank, intended for circulation, and then in circulation, and interest thereon.

6. Fund to Bear Interest.—The Circulation Fund shall bear interest at the rate of three per cent. per annum.

7. Adjustment Annually.—The Circulation Fund shall be adjusted, as soon as possible after the thirtieth day of June in each year, in such a way as to make the amount at the credit of each bank contributing thereto, unless herein otherwise specially provided, equal to five per cent. of the average note circulation of such bank during the then last preceding twelve months.

8. Average Note Circulation, How Determined—Proviso.—

The average note circulation of a bank during any period shall be determined from the average of the amount of its notes in circulation, as shown by the monthly returns for such period made by the bank to the Minister; and where, in any return the greatest amount of notes in circulation at any time during the month is given, such amount shall, for the purposes of this section, be taken to be the amount of the notes of the bank in circulation during the month to which such return relates: Provided, however, that in determining the average note circulation of a bank under this subsection the daily average for each month of the amount of the bank's deposit (if any) in the central gold reserves which has not been withdrawn or deemed to be withdrawn within the meaning of this Act shall be deducted from the greatest amount of the notes of the bank in circulation at any time during the month.

9. Rights of Minister—Proviso.—The Minister shall, with respect to all notes paid out of the Circulation Fund, have the same rights as any other holder of notes of the bank: Provided that all such notes, and all interest thereon, so paid by the Minister, after the amount at the credit of such bank in the Circulation Fund, and all interest due or accruing due thereon, has been exhausted, shall bear interest, at the rate of three per cent. per annum, from the time such notes and interest are paid until such notes and interest are repaid to the Minister by or out of the assets of such bank. 53 V., c. 31, s. 54; 63-64 V., s. 26, s. 13.

65. Notes of Bank Suspending Payment to Bear Interest.

—In the event of the suspension by a bank of payment in specie or Dominion notes of any of its liabilities as they accrue, the notes of the bank, issued or re-issued, intended for circulation, and then in circulation, shall bear interest at the rate of five per cent. per annum, from the day of the suspension to such day as is named by the directors, or by the liquidator, receiver, assignee, or other proper official, for the payment thereof.

2. Notice of Time for Payment.—Notice of such day shall be given by advertisement in at least three consecutive issues of a daily newspaper, published in the place in which the chief office of the bank is situate, and if there is no daily newspaper published there, then by advertisement in two consecutive issues of any weekly newspaper published in that place.

3. As to Notes not then Presented.—If any notes presented for payment on or after any day named for payment thereof are not paid, all notes then unpaid and in circulation shall continue to bear interest until such further day as is named for payment thereof, of which day notice shall be given in manner hereinbefore provided.

4. Notes not Redeemed to be Paid out of Circulation Fund.

—If the directors of the bank or the liquidator, receiver, assignee or other proper official fails to make arrangements within two months from the day of the suspension of payment by the bank, for the payment of all of its notes and interest thereon, the Minister may make arrangements for the payment out of the Circulation Fund, of the notes remaining unpaid and all interest thereon, and the Minister shall give such notice of the payment as he thinks expedient.

5. Interest to Cease.—Notwithstanding anything herein, all interest upon such notes shall cease upon and from the date named by the Minister for such payment.

6. Government not Liable.—Nothing herein shall be construed to impose any liability upon the Government of Canada, or upon the Minister, beyond the amount available from time to time out of the Circulation Fund. 53 V., c. 31, s. 54; 63-64 V., c. 26, s. 1. Am.

Cf. Winding-Up Act, ss. 158, 159.

66. Payment from Fund.—All payments made from the Circulation Fund shall be without regard to the amount contributed thereto by the bank in respect of whose notes the payments are made.

2. If Fund Exceeded—Proviso.—If the payments from the Circulation Fund exceed the amount contributed to the Circulation Fund by the bank so suspending payment, and all interest due or accruing due to such bank thereon, the other banks to which this Act applies shall, on demand, make good to the Circulation Fund the amount of the excess, proportionately to the amount which each such other bank had or should have contributed to the Circulation Fund, at the time of the suspension of the bank in respect of whose notes the payments are made: Provided that,—

(a) each of such other banks shall only be called upon to make good to the Circulation Fund its share of the excess in payments not exceeding, in any one year, one per cent. of the average amount of its notes in circulation;

(b) such circulation shall be ascertained in such manner as the Minister decides; and

(c) the Minister's decision shall be final.

3. Amounts Recovered, How Distributed.—All amounts recovered and received by the Minister from the bank on account of which such payments were made shall, after the amount of such excess has been made good as aforesaid, be distributed

among the banks contributing to make good such excess, proportionately to the amount contributed by each. 53 V., c. 31, s. 54; 63-64 V., s. 26, s. 12.

67. Refund of Deposit if Bank is Wound Up.—In the event of the winding up of the business of a bank by reason of insolvency or otherwise, the Treasury Board may, on the application of the directors, or of the liquidator, receiver, assignee or other proper official, and on being satisfied that proper arrangements have been made for the payment of the notes of the bank and any interest thereon, pay over to the directors, liquidator, receiver, assignee or other proper official, the amount of the Circulation Fund at the credit of the bank, or such portion thereof as it thinks expedient. 53 V., c. 31, s. 54.

68. Treasury Board Rules.—The Treasury Board may make all such rules and regulations as it thinks expedient with reference to—

- (a) the payment of any moneys out of the Circulation Fund, and the manner, place and time of such payment;
- (b) the collection of all amounts due to the Circulation Fund;
- (c) all accounts to be kept in connection therewith; and,
- (d) generally the management of the Circulation Fund and all matters relating thereto. 53 V., c. 31, s. 54.

69. Minister may Enforce Payments.—The Minister may, in his official name, by action in the Exchequer Court of Canada, enforce payment, with costs of action, of any sum due and payable by any bank which should form part of the Circulation Fund. 53 V., c. 31, s. 54.

70. Arrangements to be Made for Circulation at Par, and Redemption.—The bank shall make such arrangements as are necessary to ensure the circulation at par, in any and every part of Canada, of all notes issued or re-issued by it and intended for circulation; and towards this purpose the bank shall establish agencies for the redemption and payment of its notes at Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria, Charlottetown, Regina and Calgary, and at such other places as are, from time to time, designated by the Treasury Board. 53 V., c. 31, s. 55. Am.

A bank must ensure the circulation of its notes at par, and, if necessary for this purpose, it must establish agencies for the redemption and payment of its notes at places other than those mentioned in the section or those which may be named by the Treasury Board. No places have been designated by the Treasury Board under this section.

71. Bank Must Take its Own Notes.—The bank shall always receive in payment its own notes at par at any of its branches,

agencies or offices, and whether they are made payable there or not.

The obligation of this section is confined to *receiving in payment*. The section does not compel a bank to redeem its notes at any place except its head office or any other office at which such notes are payable, but cf. sec. 70.

72. Payment in Dominion Notes.—The bank, when making any payment shall, on the request of the person to whom the payment is to be made, pay the same, or such part thereof, not exceeding one hundred dollars, as such person requests, in Dominion notes for one, two, or five dollars each, at the option of such person.

2. No Torn or Defaced Notes.—No payment, whether in Dominion notes or bank notes, shall be made by the bank in bills that are unclean or torn or partially defaced by excessive handling.

3. Disinfection of Notes.—The Treasury Board may make regulations providing for the disinfection and sterilization by the several banks of all bank notes and Dominion notes which have come into the bank's possession before a re-issue thereof to the public; and the bank, its officers, clerks and servants, shall carry out and execute the regulations made under the authority of this section. 53 V., c. 31, s. 57. Am.

73. Bills or Notes Binding Though not Sealed.—The bills or notes of the bank signed by the president, vice-president, the general manager or other officer appointed by the directors of the bank to sign the same, promising the payment of money to any person, or to his order, or to the bearer, though not under the corporate seal of the bank, shall be binding and obligatory on the bank, in like manner and with the like force and effect as they would be upon any private person, if issued by him in his private or natural capacity, and shall be assignable in like manner as if they were so issued by a private person in his natural capacity.

2. Directors may Depute Officer to Sign.—The directors of the bank may, from time to time, authorize or depute the general manager, a manager or other officer of the bank, or any director other than the president or vice-president, or any manager of any branch or office of discount and deposit of the bank, to sign the notes of the bank intended for circulation. 53 V., c. 31, s. 58. Am.

74. Bills may be Signed by Machinery.—All bank notes and bills whereon the name of any person entrusted or authorized to sign such notes or bills on behalf of the bank is impressed by machinery provided for that purpose, by or with the authority of the bank shall be good and valid to all intents and purposes, as if

such notes and bills had been subscribed in the proper handwriting of the person entrusted or authorized by the bank to sign the same respectively, and shall be bank notes and bills within the meaning of all laws and statutes whatever, and may be described as bank notes or bills in all indictments and civil or criminal proceedings whatever; Provided that if all such names are impressed by machinery, at least one such name to each note or bill together with a distinguishing device and number shall be impressed or engraved under the authority of the bank after the notes are received by the bank from the engraver and printer, and shall not be otherwise impressed or engraved. 53 V., c. 31, s. 29. Am.

75. Counterfeit or Fraudulent Notes to be Stamped.—

Every officer charged with the receipt or disbursement of public moneys, and every officer or any bank, and every person acting as or employed by any banker, shall stamp or write in plain letters, upon every counterfeit or fraudulent note issued in the form of a Dominion or bank note, and intended to circulate as money, which is presented to him at his place of business, the word "Counterfeit," "Altered" or "Worthless."

2. If Wrongfully Stamped.—If such officer or person wrongfully stamps any genuine note he shall, upon presentation, redeem it at the face value thereof. 53 V., c. 31, s. 62.

THE BUSINESS AND POWERS OF A BANK.

76. Business and Powers of Bank.—The bank may,—

(a) open branches, agencies and offices;

(b) engage in and carry on business as a dealer in gold and silver coin and bullion;

(c) deal in, discount and lend money and make advances upon the security of, and take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities or the stock, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise, or Dominion, provincial, British, foreign, and other public securities; and,

(d) engage in and carry on such business generally as appertains to the business of banking.

2. Exceptions.—Except as authorized by this Act, the bank shall not, either directly or indirectly,—

(a) deal in the buying or selling, or bartering of goods, wares and merchandise, or engage or be engaged in any trade or business whatsoever;

(b) purchase or deal in, or lend money, or make advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; or,

(c) lend money or make advances upon the security, mortgage or hypothecation of any lands, tenements or immovable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise. 53 V., c. 31, s. 64.

A bank chartered under the Bank Act, in addition to being a corporation with certain specified powers and subject to certain specified restrictions, is by sec. 76 of that act authorized to "engage in and carry on such business generally as appertains to the business of banking." See Falconbridge, p. 131.

The chief business and powers of a bank may be classified as follows:

1. Normally a bank is the debtor of its customer and is bound to discharge its indebtedness by honouring its customer's cheques. As to deposits, see sec. 95 of the Bank Act. As to cheques, see the Bills of Exchange Act, Part III.

2. A bank usually undertakes expressly or impliedly to honour bills of exchange accepted by its customer, and made payable at the bank, to the extent of its customer's balance, or to an agreed amount.

3. A bank invariably acts as the collecting agent of its customer.

4. Incidentally the business of a bank as a dealer in money, etc., involves the issue in exchange for money of instruments whereby the bank in effect acknowledges its obligation to pay money to or honour drafts of the holder or other person entitled under the terms thereof, as the case may be.

Cf. sec. 76 which authorizes the bank to deal in gold and silver coins, bills of exchange, etc.

5. A bank may serve the purpose of providing the public with a paper currency in the shape of its promissory notes.
See sec. 61.

6. A bank is also a lender of money.

Sec. 76 specifies the property upon which a bank may lend.

7. A bank is sometimes the bailee of title deeds and other valuables in small compass entrusted to it by its customer for safe custody.

This section expressly authorizes a bank to do certain specified classes of acts, and forbids it to do certain other specified classes of acts—the prohibition, however, being subject to a very important qualification.

The authorized acts are as follows:—

The second part of the section is in restriction of the powers of the bank, and provides that, "*except as authorized by this Act,*" the bank shall not, either directly or indirectly:—

(a) Deal in the buying or selling, or bartering of goods, wares and merchandise, or engage or be engaged in any trade or business whatsoever;

(b) Purchase, or deal in, or lend money, or make advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; or

(c) Lend money or make advances upon the security, mortgage, or hypothecation of any land, tenements or immoveable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise.

EXCEPT AS AUTHORIZED BY THIS ACT.—The exceptions provided for by this clause are important, and are contained in the first sub-

section of this section and in secs. 77-89; see especially secs. 80, 84, 86 and 88.

The prohibition is subject to sec. 80. See also sec. 77.

SHARE OF ITS OWN CAPITAL STOCK OR OF THE CAPITAL STOCK OF ANY BANK.—If a bank acquires shares of its own stock by forfeiture under sec. 40 for non-payment of calls, it is obliged under sec. 41 to sell them within six months.

SECURITY MORTGAGE OR HYPOTHECATION OF ANY LANDS, TENEMENTS, OR IMMOVABLE PROPERTY.—The prohibition as to mortgages of real estate is subject to sec. 80.

OR OF ANY SHIPS OR OTHER VESSELS.—This prohibition is now subject to the provisions of sec. 85.

GOODS, WARES AND MERCHANDISE.—One clause of this section forbids dealing in the buying, selling, etc., of goods. Another clause prohibits lending money on their security. The clauses are subject to the provisions of secs. 86 to 90, as well as of sec. 80.

The expression "goods, wares and merchandise" is defined by sec. 2 (f) to include, in addition to the things usually understood thereby, timber, deals, boards, staves, saw-logs and other timber, petroleum, crude oil and all agricultural produce and other articles of commerce.

(1) *Brown v. Commercial Bank*, 10 U. C. Q. B. 129 (1852).

The plaintiffs indorsed a promissory note to the defendants for collection. The note was made by one C. C., living in Cobourg, payable to the order of one G. S. B. generally, not at any bank or other place; and from G. S. B. it had passed by several indorsements to the plaintiffs. After it had been received by the defendants, it was indorsed by their teller at Toronto in favor of J. T., their agent at Cobourg.

The different endorsers were notified by the bank that the note had been presented to the maker, and payment refused, and that the bank looked to them for payment; and the note was returned to the plaintiffs as having been duly presented.

The plaintiffs then sued the indorsers, but were defeated in their actions, in consequence of a want of proper presentment for payment.

Held, that, under the circumstances of this case, the banks were liable to the plaintiffs for such want of presentment, notwithstanding a notice issued by them, and which the plaintiffs had received, that all notes delivered to them, and that they (the defendants) would be responsible only for moneys actually received in payment of such notes, but not for any omissions, informalities, or mistakes, in respect of such notes.

(2) *Richer vs. Voyet*, L. R., 5 P. C. 461 (1874).

A bank certificate was given in the following form:—

MONTREAL, 7 Septembre, 1863.

"A. B. a déposé dans cette banque à intérêt à quatre pour cent. par an, la somme de deux mille dollars, payable à l'ordre C. D., lors de la remise du présent certificat. Cette somme pour porter intérêt devra rester au moins trois mois dans cette banque, et le porteur de ce certificat ne pourra la retirer qu'après quinze jours d'avis, l'intérêt cessant du jour de cette avis."

Quære, whether this was a negotiable instrument under Art. 2349 of the Civil Code of Lower Canada.

Under the 776th article of the Civil Code of Lower Canada, which provides that gifts of moveable property accompanied by delivery may be made and accepted by private writings or verbal agreements, the anterior possession of property which can be the subject of *don manuel* is equivalent to delivery at the time of the gift although the former possession was for another purpose.

The maxim of the French law—*possession vaut titre*—held not to apply where an agent held possession of a bank deposit certificate standing in the name of his principal, and bearing the principal's endorsement, the production of which certificate was required by the bank whenever interest was paid.

(3) *Lewis vs. Jeffrey*, M. L. R., 7 Q. B. 141 (1875).

Where a note of a third party is transferred for valuable security, being given in payment of goods purchased, and the note is not endorsed by the transferor, a warranty is implied that the maker is not insolvent to the knowledge of the transferor.

If it be proved that the maker of the note was insolvent to the knowledge of the transferor, the party who received it is entitled to offer it back and claim the amount from the transferor, without asking for the rescission of the contract *in toto*.

(4) *Dunspough vs. Molsons Bank*, 22 C. J. 57 (1878).

Where a bank is induced to advance a sum of money to B. on the undertaking implied in a telegram from A. to B. and exhibited to the bank, that A. will repay the advance by accepting a draft for the amount thereof, and the advance is used to retire another draft for which A. is liable, that A. is liable to the bank for the advance, though he subsequently refuses to accept the draft.

(5) *Molsons Bank vs. Kennedy*, 10 R. L. 110 (1879).

A bank is not prohibited by the Banking Act from guaranteeing the payment of certain merchandises purchased by their customer.

(6) *The Railway & Newspaper Advertising Co. vs. Molsons Bank*, 2 L. N. 207 (1879).

A bank is not liable for calls on stock of an incorporated company held as collateral security.

(7) *Union Bank vs. Ontario Bank*, 24 L. C. J. 309 (1880).

Where a bank draws a draft for \$25 on one of its branches, and fails to advise said branch of the fact, and the draft is afterwards raised to one of \$5,000, and so skilfully as to deceive the branch office, which pays the amount of the draft as raised to another bank, holding the draft in good faith, and, in consequence of such payment, this latter bank pays \$3,500 on account thereof to the person from whom the bank received it, the former bank cannot recover from the latter bank the amount so paid to it.

(8) *Bank of Montreal vs. Geddes*, 3 L. N. 146 (1880).

Under the Banking Act of 1871, 34 Vict., ch. 5, a bank could not legally make loans upon the security of the stock of any joint stock company, except the stock of other banks, and, therefore, an action by the bank against the directors of a street railway company for loss sustained by making a loan on its stock (which was alleged to have been unduly inflated by false statements on the part of said directors) cannot be maintained.

(9) *Consolidated Bank vs. Merchants Bank*, 27 L. C. J. 370 (1882).

A letter of guarantee given to a bank, securing the payment of

notes discounted by said bank, for certain firms mentioned, does not bind the guarantors to a bank constituted by the amalgamation of the said bank with another bank.

(10) *Bain vs. Torrance*, 1 Man. 32 (1884).

Plaintiff applied for payment over, by the bank, of money deposited at their branch office at Winnipeg.

Previous to the garnishee order being made, the money had been paid over by the head office at Toronto, under sequestration issued against the defendant in Ontario.

Held, following *Irwin vs. the Bank of Montreal*, 38 U. C. Q. B. 375, that a bank and its branches are but one concern, and that the application must therefore be discharged with costs.

(11) *Sweeney vs. Bank of Montreal*, 12 S. C. R. 661 (1885).

S. brought an action against the Bank of Montreal to recover the value of certain shares of stock transferred to the bank under the following circumstances:—S.'s money was originally sent out from England to J. R. at Montreal to be invested in Canada for her. J. R. subscribed for a certain amount of stock in a certain incorporated company as follows: "J. R. in trust," without naming for whom, and paid for it with S.'s money. He subsequently sent over the certificates of stock to S., and paid her the dividends he received on the stock. Becoming indebted to the Bank of Montreal, R. transferred to the manager of the bank as security for his indebtedness a certain number of S.'s shares, and the transfer showed in its face that he held these shares "in trust." The Bank of Montreal then received the dividends on these shares, credited them to J. R., who paid them to S. J. R. subsequently became insolvent, and S., not receiving her dividends as usual, sued the Bank for an account.

Held, that there was sufficient to show that J. R. was acting as the mandatary or agent of S., and the Bank of Montreal, not having shown that J. R. had authority to sell or pledge the said stock, S. was entitled to get an account from the bank.

(12) *Exchange Bank vs. Canadian Bank of Commerce*, M. L. R., 2 Q. B. 476 (1885).

Where drafts and notes are placed with a bank by a debtor of the bank, not as collateral security, but for collection, compensation does not take place until the bank has received the amounts collected by them on such notes; and in the present case, the debtor having become insolvent before any amounts were received on such notes, the compensation did not take place between the amount collected by the bank and the debt due to it. (Reversing M. L. R. 1 S. C. 225).

(13) *MacFarlane & Corporation of the Parish of St. Césaire*, M. L. R., 2 Q. B. 160 (1886).

A debenture is a negotiable instrument, and cannot bear a condition on the face of it, making its validity dependent upon obligations to be performed in future. And so where a municipal corporation voted a bonus to a railway company payable in debentures, and the by law imposed certain future obligations upon the company as to the mode of operating the road, it was held that debentures in which these obligations were set forth as conditions were not a valid tender.

N.B.—This judgment was confirmed in the Supreme Court of Canada, 14 S. C. R. 738.

(14) *Exchange Bank & Montreal City and District Savings Bank*, M. L. R., 6 Q. B. 196 (1887).

A savings bank, holding bank shares as pledgee, and appearing as owner on the books of the bank, is not the owner of such shares within the meaning of section 58 of the Banking Act, 34 V., ch. 5, and, therefore, is not subject to the double liability.

A bank, shares of which are transferred to a savings bank, is presumed to know that the shares are held by the latter as collateral security, inasmuch as under section 18 of 34 V., ch. 7, a savings bank cannot acquire bank shares or hold them except as pledgee. (Affirming M. L. R. 2 S. C. 129 (1881).)

(15) *Exchange Bank vs. Nowell*, M. L. R., 3 S. C. 129 (1887).

Where a bank took a note endorsed by a customer as security for past advances, amounting to about \$10,000, and after the maturity of this note, deposits amounting to more than \$100,000, were passed to his credit in the books of the bank—

Held, that in the absence of any special imputation of payments or reserve as to the application of the subsequent deposits, these deposits were to be imputed in payment of the oldest debt, of the customer's liability at the maturity of the collateral security being more than paid by the subsequent deposits, the collateral was discharged, and the bank's action against the maker and first endorser of said note would be dismissed.

(16) *Goodall vs. Exchange Bank*, M. L. R., 3 Q. B. 430 (1887).

T., a customer of the bank, discounted with that bank appellant's acceptance. When it fell due appellant failed to pay it, and the bank charged to T.'s account, who at the time owed the bank a small balance, which balance was augmented by subsequent transactions, wherein nevertheless, if the credits were imputed to the earliest indebtedness, the balance due when the acceptance matured would be more than covered. The bank retained possession of the acceptance, and brought this suit against appellant, the acceptor, to recover its amount. Appellant pleaded payment and compensation. *Held*, that the bank was entitled to recover from appellant the amount of his acceptance, and that appellant was not discharged by the credits in the bank's account with T.

(17) *Cleveland vs. Exchange Bank*, M. L. R., 3 Q. B. 30 (1887).

Where the amount of a note discounted by a bank for the endorser was charged on maturity to the endorser's account, and the deposits subsequently made by the endorser, as shown by the books of the bank, were more than sufficient to cover his indebtedness to the bank at the time the note matured, such note must be held to have been paid, and the bank has no action thereon against the maker who has paid the endorser (but without obtaining possession of the note); and the fact that the endorser's aggregate indebtedness to the bank continued to increase does not affect the question of payment of the note referred to in the absence of a reserve of recourse by the bank thereon.

(18) *Bank of Montreal vs. Sweeney*, 12 A. C. 617 (1887).—*Held* by the Privy Council, affirming the judgment of the Superior Court of Canada.

A holder of shares "in trust" is not a *mandataire, prete-nom*, and holds subject to a prior title on the part of some person undisclosed. Such holding not being forbidden by the law of the colony, a transferee from such holder is bound to enquire whether the transfer is authorized by the nature of the trust.

(19) *Maritime Bank vs. Union Bank*, M. L. R., 4 S. C. 244 (1888).

A bank acting as agent for another bank is not authorized in the absence of express agreement, to cash a cheque drawn upon the principal bank, but unaccepted by it.

A telegram from the president of the principal bank to a depositor therein, stating that certain funds are at his credit, is not an acceptance of a cheque drawn by the depositor upon the receipt of such telegram for the amount of the funds, such telegram adding nothing to the legal obligation of the principal bank towards the depositor to pay the cheque when duly presented for payment, if there were then funds at his credit to meet it and no legal hindrance to its payment existed.

No compensation arises between the principal bank and its agent, entitling the latter to set off moneys paid under an unaccepted cheque upon the principal bank against moneys held by the agent and due to the principal bank.

A custom of bankers cannot be put in evidence unless it has been specially pleaded.

(20) *Merchants' Bank & McKay*, 15 S. C. R. 672 (1888).

McKay gave a mortgage to the Merchants' Bank as security for the present indebtedness of, and future advances to, a customer of the bank. By the terms of the mortgage McKay was to be liable, amongst other things for the promissory notes, etc., of the customer outstanding at the date of the mortgage, and all renewals, alterations and substitutions thereof.

Held, that the bank having given up the said promissory notes, etc., and accepted as renewals thereof, forged and worthless paper, McKay was, to the extent of such worthless paper, relieved from liability as such surety.

Held, that the bank having accepted the renewals in the ordinary course of banking business, and it not being shown that they were guilty of negligence, the surety was not relieved.

(21) *Bank of Montreal vs. Thomas*, 16 O. R. 503 (1888).

On the maturity of a bill of exchange, the drawers thereof, thinking the acceptor would be unable to meet it, telegraphed him, that if unable to pay it to draw on them for the amount. The acceptor took the telegram to the manager of the bank, who, on the faith of it, discounted a sight draft by the acceptor on the drawers, with the proceeds of which he retired his acceptance, which was held by another bank. The drawers refused to accept the bill so drawn.

Held, that the telegram having been sent for the purpose of inducing persons to advance money on it, and to take the bill so drawn in pursuance of it, a privity was created between the bank which discounted it and the senders of the telegram, entitling the former to maintain an action against the latter for the money so advanced.

(22) *Black vs. The Bank of Nova Scotia*, 21 N. Sc. 448 (1889).

The Bank of Liverpool being indebted to defendant bank in the sum of \$80,000, agreed to pay the amount in instalments, plaintiffs, among others, being sureties for three instalments, amounting to \$60,000. Acceptances held by the Liverpool Bank were placed with the defendant bank as collateral security for the last of the instalments on which plaintiffs were liable, and were collected by defendant bank, but were afterwards appropriated by defendant bank to

a different indebtedness. Plaintiffs, in ignorance of the appropriation first mentioned, paid in 1879 a balance of \$9,772.30 demanded from them, and on afterwards discovering the facts as to the appropriation and payment, brought the present action to recover it back as paid under mistake of fact.

Held, that the amount having been appropriated in the first instance to the debt on which plaintiffs were sureties, no other appropriation could be made without plaintiffs' consent; that plaintiffs were not estopped on account of their not having demanded an investigation of the state of the accounts before paying, nor by the fact that when called on to pay they requested further time and made use of it to obtain securities from the Liverpool Bank; that defendants could not set up that they had been prejudiced by plaintiffs' payment, in their dealings with the insolvent bank, as the facts of the matter were within their knowledge and not in the knowledge of the plaintiffs; that plaintiffs were not bound to tender to defendants before action the bond of the Liverpool Bank which had been assigned to plaintiffs for the reason, among others, that it had been paid off by the money so appropriated, and was valueless.

(23) *Johansen vs. Chaplin*, M. L. R., 6 Q. B. 111 (1889).

A bank is not authorized to enter into a contract of suretyship guaranteeing the payment by a customer of the hire of a steamship under a charter party. (And see *Watts vs. Wells*, M. L. R., 7 Q. B. 387).

(24) *Landry vs. The Bank of Nova Scotia*, 29 N. B. 564 (1889).

The plaintiffs drew and endorsed a bill of exchange and delivered it to the defendants to discount, which they agreed to do if the bill was accepted. After acceptance the defendants refused to give the plaintiff either the proceeds or the bill, claiming the right to apply it to the payment of a debt which the plaintiffs owed them.

Held, that the defendants were liable in trover for a conversion of the bill.

A discount means an advance of money, upon the transfer of a negotiable instrument to the bank, payable at a future day, as security.

(25) *Thompson vs. Molsons Bank*, 16 S. C. R. 664 (1889).

The Molsons Bank took from H. & Co. several warehouse receipts as collateral security for commercial paper discounted in the ordinary course of business, and having a surplus from the sale of the goods represented by the receipts, after paying the debts for which they were immediately pledged, claimed under a parole agreement to hold that surplus in payment of other debts due by H. & Co. H. & Co., having become insolvent, Thompson, as one of the creditors, brought an action against the bank claiming that the surplus must be distributed rateably among the general body of creditors.

Held, that the parole agreement was not contrary to the provisions of the Banking Act, R. S. C., ch. 120, and that after the goods were lawfully sold the money that remained, after applying the proceeds of each sale to its proper note, could properly be applied by the bank under the terms of the parole agreement.

(26) *Re Central Bank, Morton and Black's Claims*, 17 O. R. 574 (1889).

An incorporated bank, by its cashier, issued deposit receipts

in the following form: "Received from the sum of \$ which this bank will repay to the said or order, with interest at 4 per cent. per annum, on receiving 15 days' notice. No interest will be allowed unless the money remains with the bank six months. This receipt to be given up to the bank when payment of either principal or interest is required."

Held, that it was competent under the Banking Act, R. S. C., ch. 120, to issue such deposit receipts, and that even if they did not possess all the incidents of promissory notes, yet being meant to be transferred by indorsement, they were so far negotiable as to pass a good title to a *bona fide* purchaser for value, taking without notice of any infirmity of title.

But, *semble*, that these deposit receipts were negotiable instruments under which the holders were entitled to recover as upon a promissory note made by the bank.

(27) *McDonald vs. Rankin*, M. L. R., 7 S. C. 44 (1890).

The action of a shareholder of a bank against the directors, to recover loss occasioned by their gross negligence and mismanagement, being an action of mandate, is prescribed only by thirty years.

The action against the directors for maladministration appertains to the corporation, but in default of suit by the corporation it is competent to the shareholder to institute it.

Directors of a corporation are bound to exercise the care of a prudent administrator in the management of its business. Such acts as allowing overdrafts by insolvent persons without proper security, the impairment of the capital of the bank by the payment of unearned dividends, the furnishing of false and deceptive statements to the Government, the expenditure of the funds of the bank in the legal purchase of its own shares, are acts of gross mismanagement amounting to dol, and render the directors personally liable, jointly and severally, for losses sustained by the shareholders by reason thereof.

Directors cannot divest themselves of their personal responsibility. While they are at liberty to employ such assistants as may be required to carry on the business of the corporation, they are, nevertheless, responsible for the fault and misconduct of the employees appointed by them, unless the injurious acts complained of be such as could not have been prevented by the exercise of reasonable diligence on their part.

(28) *Montreal City and District Savings Bank vs. Geddes*, M. L. R., 6 S. C. 243 (1890).

A creditor is not obliged to sell his pledge before bringing an action of damages against the directors of a corporation indebted to him for making false statements.

(29) *Watts vs. Wells*, M. L. R., 7 Q. B. 387 (1890).

A bank cannot validly enter into a contract of suretyship, guaranteeing the payment by a customer of the hire of a steamship under a charter party; and where the bank has derived no benefit from such contract, a claim made thereon against the bank in liquidation will be dismissed.

(30) *La Banque Nationale vs. Merchants' Bank*, M. L. R., 7 S. C. 326 (1891).

A custom of trade or banking in derogation of the common law must be strictly proved. And where a bank sought to excuse itself

from taking back an unaccepted cheque on another bank, which had been sent into the clearing house in the morning, on the ground that by a rule of the association a cheque for which there were no funds should be returned to the presenting bank before noon of the day of presentation, whereas the cheque in question was not offered back until 3.30 p.m., and it appeared that the rule in question was of a temporary character only, and was not usually followed by the banks which belonged to the Clearing House Association, it was held that such rule could not derogate from the ordinary rule of law as to the return of cheques for which there are no funds.

(31) *Petry vs. La Caisse d'Economie de Québec*, 19 S. C. R. 713 (1891).

The curator to the substitution of W. Petry paid to the respondents the sum of \$8,632 to redeem 34 shares of the capital stock of the Bank of Montreal, entered in the books of the bank in the name of W. G. P. in trust, and which the said W. G. P., one of the *gérers* and managers of the estate, had pledged to respondents for advances made to him personally. J. H. P. *et al.* appellants, representing the substitution, by their action demanded to be refunded the money which they alleged H. J. P., one of them, had paid by error as curator to redeem shares belonging to the substitution. The shares in question were not mentioned in the will of William Petry, and there was no inventory to show they formed part of the estate, and no *acte d'emploi* or *remploi* to show that they were acquired with the assets of the estate.

Held, that the debt of W. G. P. having been paid by the curator with full knowledge of the facts, the appellants could not recover. Arts. 1047, 1048 C. C.

Bank stock cannot be held as regards third parties in good faith to form part of substituted property on the ground that they have been purchased with the moneys belonging to the substitution without an act of investment in the name of the substitution and a due registration thereof. Arts. 931, 938, 939 C. C.

(32) *Central Bank vs. Garland*, 26 O. R. 142 (1891).

A tradesman sold goods to customers, taking promissory notes for the price, and also hire receipts by which the property retained in him till the full payment was made. The notes were discounted through the medium of a third person by the plaintiffs, who were made aware when the line of discount was opened of the course of dealing and of the securities held. They were not, however put in actual possession of the securities, and there was no express contract in regard to them. In an action to recover the securities or their proceeds from the assignee for creditors of the tradesman, *held*, that the securities were accessory to the debt, that in equity the transfer of the notes was the transfer of the securities, that the defendant was in no higher position than his assignor, and could not resist the claim to have the receipts accompany the notes, and that it was not material that the relation of assignor and assignee did not immediately exist between the tradesman and the plaintiffs.

(33) *Molsons Bank vs. Carscaden*, 8 Man. 451 (1892).

A firm of contractors agreed with S that, if he would endorse their notes to the Molsons Bank to the amount of \$10,000, they would give an assignment to the bank of all moneys to be payable to them from a railway company on contracts made and to be made by them with the railway company to secure the notes. They also agreed with the bank that in consideration of an advance to them of

the money upon their notes endorsed by S., they would assign to the bank the said moneys, and gave to N., the bank manager, a power of attorney authorizing him to collect from the railway company the said moneys. S. endorsed the notes and the moneys were advanced.

Held, that this transaction amounted to an equitable assignment to the bank for the moneys in question.

Held also, that moneys arising out of future contracts can be assigned.

Held also, that it is within the powers of incorporated banks to make advances upon the security of any *choses in action*, except in so far as the Banking Acts expressly exclude such transactions.

(34) *Re The Essex Land & Timber Co. Trout's Case*, 21 O. R. 367 (1892).

On a petition by a mortgagee in the winding-up proceedings of a company, under R. S. C., ch. 129, asking for the conveyances to him by the liquidator of the company's equity of redemption, the court has jurisdiction to make the usual order for foreclosure or sale.

It is a matter of discretion with the court whether an action will be directed or summary proceedings sanctioned.

A mortgage upon land given to secure endorsements upon negotiable paper to be made by the mortgagee for the benefit of the mortgagor becomes operative only upon the endorsements being made; and an assignment of such mortgage to a bank before the making of the endorsements is not a violation of section 45 of the Banking Act, R. S. C., ch. 120.

(35) *Re Central Bank, Canada Shipping Co.'s Case*, 21 O. R. 515 (1892).

A bank in this Province, under an agreement with a customer, domiciled here, advanced money to him to enable him to buy cattle in this Province, which, under the agreement, when purchased, were to be forwarded by rail to him at Montreal, and to be shipped by steamship to Liverpool, the bank having no control over the cattle until they reached the vessel, when they were to be received by the steamship for the bank, and the customer's possession and control over them was to end; bills of lading therefor in favor of the bank being then signed. The cattle were purchased and sent to Montreal as agreed on. On arriving at the steamship, and before the bills of lading were made out, a creditor of the customer attached the cattle under a writ of *saisie-arrêt*, but the steamship owners, disregarding the writ, signed the bills of lading and conveyed the cattle to their destination. The creditor subsequently recovered a judgment for the value of the cattle in the Province of Quebec, against the steamship owners, which the latter having paid, sought to prove on the estate of the bank in winding up proceedings, but the claim was disallowed by the master.

On appeal:—

Held, that, apart from the Banking Act, R. S. C., ch. 120, by virtue of the agreement between the bank and its customer, the possession and a special property in the goods passed to the bank, of which the steamship owners were aware, and having assented thereto upon receipt of the cattle, before any process was served, must be taken to have held the cattle for the bank.

Held, also, that the rights of the parties were entirely governed by the provisions of the Banking Act and following, though not

altogether approving, *Merchants' Bank vs. Suter*, 24 Gr. 356, that under sec. 53, sub-sec. 4 of the Act the bank had under the agreement and the facts proved, an equitable lien upon the cattle from the time of the making of the agreement, which prevailed over the attachment.

Held, lastly, that the bank "acquired" the bills of lading within the meaning of the Banking Act as soon as the cattle were received by the steamship, although it did not at that time actually "hold" the bills.

(36) *Pacaud vs. La Banque du Peuple*, R. J. Q., 3 S. C. 8 (1893).

The pledgee who applies to his own uses a sum of money pledged as security for the payment of a note is guilty of an abuse of the pledge, within the meaning of Article 1975 of the Civil Code, sufficient to justify the pledgor in demanding repayment of such money with interest.

Where the return of money pledged as security for the payment of a note is conditioned upon the collection by the pledgee of the amount of such note, the fact that he has been himself the means of preventing the collection of the note (as by releasing one of the parties thereto, the others being solvent) will make the conditional obligation (to return the money) absolute.

A bank is bound by the entries in its books, and especially in its customers' pass-books, at least in the absence of other proof of error.

(37) *La Banque du Peuple & Pacaud*, R. J. Q., 2 Q. B. 424 (1893).

A bank which, in discounting a note, receives from a third party its value in pledge as collateral security for its payment, on the condition that it will use diligence to recover the amount of the note from the maker and the endorser before realizing the value, violates this condition in accepting a renewal of the note and in treating with one of the endorsers for his discharge for a partial payment, giving him thus a means of contestation of the action which it has against him. The owner of the value put in pledge is from that time entitled to recover from the bank, followed in *Friedman vs. Caldwell*, R. J. Q., 3 Q. B. 200 (1894).

(38) *Brush vs. Molsons Bank*, R. J. Q., 3 Q. B. 12 (1893).

Appellant on the 22nd March, 1886, addressed the following letter to the bank respondent:—

"In consideration of your making advances to W. C. Hibbard upon his drafts upon W. R. Hibbard, and accepted by the latter to the extent of \$6,000. I hereby guarantee you, the said bank, the due payment of all sums at any time due and owing to you, the said bank, from the said W. C. Hibbard, under said drafts, not exceeding the sum of \$6,000, and any interest and costs which may accrue thereon, and that no payment received by you from said W. C. Hibbard, or otherwise, shall be taken in reduction of my liability upon this guarantee, and that you may give any time to, or take any security from, or accept any composition, from said W. C. Hibbard, or any of the parties to any bills, drafts, notes or cheques discounted or held by you as aforesaid, without prejudice to your claim upon me under this guarantee. And I further agree that all dividends, compositions and payments received from him, them or any of them, or his or their representatives, shall be taken and applied as payment in gross, and that this guarantee shall apply to and secure any ultimate balance that shall remain due to you, the said bank under said drafts. And I further agree that this guarantee shall be a con-

tinuing guarantee for an amount not exceeding the said sum of \$6,000 due to you from the said W. C. Hibbard for any or all of the causes aforesaid, and shall remain in force until revoked by written notice to the said Molsons Bank, and that the same shall not be revoked by my death."

Upon receipt of this letter, respondent advanced to W. C. Hibbard \$6,000 in three sums, upon his drafts upon W. R. Hibbard and accepted by the latter. These drafts were renewed from time to time as they became due, by similar drafts which were similarly renewed when they became due until 1889. In 1888, Hibbard closed his account with the bank, drew out his balance, \$88, and went out of business. In an action by the bank against the appellant, for the amount of the draft as representing the balance due upon advances made under the letter of guarantee—

Held, 1. The guarantee, being a continuing guarantee for the amount, was not restricted to the original drafts, but extends to those by which they were renewed, until revoked by written notice.

2. The fact that Hibbard closed his account and drew out his balance did not affect the case, as it did not appear that any draft was then due, to which the balance could be applied.

(39) *Banque Jacques Cartier vs. The Queen*, R. J. Q., 8 S. C. 346 (1893).

Petition of right claiming the amount due on a letter, usually styled a letter of credit, given by the Provincial Secretary to one D., to enable him to execute a printing contract with the government, and transferred to petitioners.

Held, that it was not competent to the Provincial Secretary, by this letter of credit, to bind the province to the payment of any advances to the said D., and that though the subsequent voting by the legislature of an item in the Estimates and Supply Act may have empowered the Executive to pay the amount for which the letter had been signed, it did not impose on it any obligation so to do, nor confer on petitioners any right to enforce payment.

(40) *Ward vs. Quebec Bank*, R. J. Q., 3 Q. B. 122 (1894).

Where a note is received as collateral security from a holder in due course, before maturity, and without notice of any defect in the title of the person who negotiated it, the creditor has all the rights of such holder as regards all parties prior to him, and he can recover the amount of the note from such prior parties. Where the sum secured is less than the amount of the note, the pledgee, as regards the surplus, sues as trustee for the pledgor and can recover if the latter could do so.

(41) *Macnider vs. Young*, R. J. Q., 3 Q. B. 539 (1894).

The sale and transfer of instruments of no intrinsic value, but evidences of value, as notes, bills of exchange, bank bills, bills of lading, warehouse receipts, bonds and debentures, is not subject to Arts. 1487, 1488 and 1490 C. C. Such instruments, when payable to bearer, require no other evidence of proprietorship than simple possession, against which the only practically effective plea is bad faith in the holder, and the burden of proof is on the party who sets it up. In the absence of such allegation and proof, the owners of debentures pledged, without authority, by their agent, as security for a loan to himself by a broker, cannot revendicate them in the hands of the latter.

The fact that when they were pledged, the debentures had matured and were past due is immaterial, and does not affect the right

of ownership of those who, as the parties in this case are not liable, either as makers or endorsers, for the payment thereof.

(42) *Henderson vs. Bank of Hamilton*, 25 O. R. 641 (1894).

The damages recoverable by a non-trading depositor in a savings bank who has made his deposit subject to special terms, on a wrongful refusal of the bank to pay it to him personally, are limited to the interest on the money.

On an appeal this judgment was confirmed, 220 A. R. 414.

(43) *Rolland et al. vs. La Caisse d'Economie Notre Dame de Quebec*, 24 S. C. R. 405 (1895).

L. borrowed a sum of money from a savings bank, which he agreed to repay with interest, transferring in pledge as collateral security letters of credit on the Government of Quebec. L. having become insolvent, the bank filed its claim for the amount of the loan with interest, with the curator of the estate, and on appeal, the appellants, as creditors of L., contested on the ground that the said securities were not of the class mentioned in the Act relating to savings banks (R. S. C., c. 122, s. 20), and the bank's act in making the said loan was *ultra vires* and illegal.

Held, that assuming that the act of the bank in lending the money on the pledge of such securities was *ultra vires*, although this might affect the pledge as regards third parties interested in the securities, it was not of itself and *ipso facto*, a radical nullity of public order of such a character as to disentitle the bank under Arts. 989 and 990 C. C. from claiming back the money with interest. *Bank of Toronto vs. Perkins* (8 Can. S. C. R. 903), distinguished.

(44) *Jacques Cartier Bank vs. The Queen*, 25 S. C. R. 84 (1895).

The Provincial Secretary of Quebec wrote the following letter to D. with the assent of his colleagues, but not being authorized by order in council:

J'ai l'honneur de vous informer que le gouvernement fera voter, dans le budget supplémentaire de 1891-92, un item de six mille piastres qui vous seront payées immédiatement apres la session, et cela à titre d'acompte sur l'impression de la "Liste des Terres de la Couronne, concédées depuis 1763, jusqu'au 31 decembre, 1890," dont je vous ai confié l'impression dans une lettre en date du 14 janvier, 1891.

"Cette somme de six mille piastres sera payée au porteur de la présente lettre revêtue de votre endossement."

D. indorsed the letter to a bank as security for advance to enable him to do the work.

Held, that a bank cannot deal in such securities as the said letter of credit which is dependent on the vote of the legislature, and therefore not a negotiable instrument within the Bills of Exchange Act of 1890 or The Bank Act. R. S. C., ch. 120, secs. 45 and 60.

(45) *Donough vs. Gillespie*, 21 O. A. R. 292 (1895).

Bankers are subject to the principles of law governing ordinary agents, and, therefore, bankers to whom as agents a bill of exchange is forwarded for collection, can receive payment in money only and cannot bind the principals by setting off the amount of the bill of exchange against a balance due by them to the acceptor.

(46) *La Banque Ville Marie vs. Mayrand*, R. J. Q., 10 S. C. 460 (1896).

A bank having discounted a note signed by M. and endorsed by

the defendant, a public trader, acting by her husband who was her attorney for the purposes of her business, the proceeds of the discount were entered in the books of the bank to the credit of M. and it was proved that the female defendant had received no consideration.

Held, that the endorsement of the note exceeded the power of the defendant's husband, and that the bank having paid the proceeds of the discount to the maker of the note who was clearly not doing the same business as the defendant, on a note signed, not by the latter, but by her attorney, had no action against the defendant, it being understood that she had received no consideration for the note.

(47) *Cooper vs. Molsons Bank*, 26 S. C. R. 611 (1896).

If a merchant obtains from a bank a line of credit on terms of depositing his customers' notes as collateral security, the bank is not obliged, so long as the paper so deposited remains uncollected, to give any credit in respect of it, but when any portion of the collaterals is paid, it operates at once as payment of the merchant's debt, and must be credited to him.

(48) *Insky vs. Hochelaga Bank*, R. J. Q., 10 S. C. 510 (1896).

The agreement between a merchant and a bank that the deposits made by the merchant would be kept by the bank to guarantee the payment of promissory notes bearing the former's signature, and discounted by the bank, is a commercial transaction which can be proved by witnesses.

The plaintiffs, under telegraphic instructions from one of their branches, telephoned from the head office to one of their sub-agencies to credit the defendant with \$2,000. The sub-agency, however, by some misunderstanding, credited him with \$3,000, which he drew out. The \$2,000 had been paid into the branch bank in the first instance by way of an advance on the shipping bills of certain cattle bought from the defendant for about \$2,800, but of this the plaintiffs had no notice. The defendant, however, refused to pay the difference between the \$2,000 and the price of the cattle, on the ground that in faith of the payment to him he had allowed them to be shipped abroad, which by his agreement for sale was not to be done till payment of the price in full.

Held, that the defendant was bound to repay the excess over the \$2,000.

(50) *Litman vs. Montreal City and District Savings Bank*, R. J. Q., 13 S. C. 262 (1897).

Where a bank receives a note for collection, and in the regular course of business places the same in the hands of a responsible and perfectly solvent agent, it is not liable for the loss of the note in the mails. In any case the defendant's offer to give security to the makers and endorser that they would never be troubled if they paid the note, was sufficient.

(51) *Merchants' Bank of Canada vs. Duvvau*, R. J. Q., 15 S. C. 326 (1898).

The Adams Shoe Company shipped goods to a Toronto house. Drafts were drawn for the price of such goods and discounted by the Merchants' Bank. As security for these advances, not only the title to the drafts was transferred to the bank, but also the claim against the Toronto house for the price of the goods shipped and whose value the drafts represented.

Held:—There is no prohibition in the Banking Act against taking as security, for advances made by a bank, the transfer of a certain debt, and the same is permitted. Consequently, the transactions above mentioned were valid and within the legal powers of the bank.

(52) *Richards vs. Bank B. N. A.*, 8 B. C., L. R., 143 (1901).

Where the members of a firm have separate private accounts with the bankers of the firm, and a balance is due to the bankers from the firm, the bankers have no lien for such balance on the separate accounts.

(53) *Thien vs. Bank of British North America*, 19 W. L. R. 549 (Alta.).

Held, that commercial debts are not "goods, wares, and merchandise," within the meaning of section 76 of the Bank Act; and so the bank might lend upon the security of an assignment of the debt represented by the lien-note; and the chattel property forming the subject-matter of the lien-note would *prima facie* follow the debt represented by it. In every case not clearly a case of security subsequently given for a debt already contracted, the question of fact, whether the advances were made upon the security, would arise. That this question of fact and other questions arising in the action should not be determined upon motion for summary judgment but should be tried in the ordinary way.

(54) *McCready Co. vs. Alberta Clothing Co.*, 3 Alta. R. 67.

A bank has no right to appropriate the credit balance of a customer's account in payment of the customer's unmatured bill in favour of the bank.

(55) *Stavert vs. McMillan*, 24 O. L. R., 456 (appealed to P. C.)

Money of Bank used by Directors to purchase shares of Bank. The Directors and others interested gave notes to Bank, which were endorsed by Bank to Plaintiff who sued makers. *Held*, the Plaintiff could recover and Defendants were not entitled to be indemnified to the Bank, which was brought in as a third party. Cases cited.

(56) *Merchants' Bank of Canada vs. Thompson*, 3 D. L. R. 577. 21 O. W. R. 740.

When a negotiable instrument is endorsed to a bank by a customer for collection, the bank is entitled to a lien thereon for all debts then payable to it by the customer, and for all debts which may become so payable while the instrument is in its possession.

Where he endorses it as security for such debts as may from time to time be due by him to the bank, the instrument is good in the hands of the bank against the maker for the amount of the customer's indebtedness. The bank is not deprived of its rights or of its position as a holder in due course because at some times during the bank's possession no such indebtedness exists.

(57) *Stavert vs. McMillan* (1910), 16 O. W. R., 125. 21 O. L. R. 245.

The Sovereign Bank used about \$400,000 of its funds in purchasing its own shares and divided them into seven equal blocks, which were held by directors, relatives and friends. Promissory notes were taken for the shares, the bank agreeing to indemnify the makers of the notes against any loss arising from the sale of the stock. Plaintiff, the curator of the bank, brought action against a director for \$33,110 on some of these notes:—*Held*, that the Bank Act, R. S. C. c. 29, s. 76, prevented the bank from acquiring any title

to the shares so purchased; the bank in transferring said shares to defendant and taking his notes therefor gave no legal consideration for the notes and the action should be dismissed without costs, seeing the defence was illegality.

(58) *Re Central Bank Exp. Morton* (1889), 30 C. L. T. 424.

Deposit receipts are not negotiable securities—only assignable choses in action.

(59) *Freedman vs. Dominion Bank* (1909), 37 Que. S. C. 535.

Held, when a customer hands over notes and bills to a bank for discount, and part of them only is discounted, the rest being held for collection, the bank acquires no lien on the latter for the customer's indebtedness to it.

(60) *Northern Crown Bank (Appellant) vs. Herbert (Respondent)*, Que. K. B.

The appellant appealed from a judgment of the Superior Court of April 16th, 1912, which found in its favour to the amount of \$1,783 on its action taken for \$5,723, the said action being based on two letters of credit of March and August, 1907, signed by the respondent in favour of the Crown Bank of Canada (the appellant's legislative predecessor in title) for the benefit of the Andrew H. McDowell Co., and also on a deed of hypothecary guarantee consented by respondent in favour of appellant for the sum of \$12,000 as collateral guarantee of these letters of credit, each of them being for the sum of \$6,000.

The question at issue was whether Herbert, in virtue of these letters of credit and of the guarantee, is liable not only for the advances made by the appellant to the A. H. McDowell Co., but also for the drafts which the latter concern owed to the Dominion Thread Mills, which drafts the appellant discounted and returned to the latter company after non-payment, but recovered from the liquidator after the Dominion Thread Mills went into liquidation.

By the letters of credit the respondent binds himself to reimburse the appellant for any sum that might be due by the McDowell Co., "Whether arising from dealings between the bank or from other dealings by which the bank may become in any manner whatsoever a creditor of the customer." The deed of hypothecary guarantee merely confirms these two letters of credit with the simple addition of a hypothecary security.

Held, the contract of suretyship must be strictly construed.

The respondent did not, by the words "any other dealings" undertake to pay the debts which third parties might obtain against the debtor, and the deed of suretyship was not to avail for the payment of debts which were obtained without the consent of such debtor.

The sole safeguard of the surety is the debtor's participation in the creation of a claim secured by the guarantee.

That, on the facts in this case, the respondent was deprived of this safeguard.

(61) *Gratton vs. Hochelaga Bank*, 37 Que. S. C. 324.

A bank which does business with an agent or mandatary and discounts notes signed by him as such, cannot be held to inquire into or trouble itself respecting the use made by such agent of the moneys so advanced to him. But a bank discounting the personal notes of a customer, which are endorsed by him as agent for a third person, who is also a customer of the bank, and has a current account

therein, and who sees by its books that the principal's money, his account being closed, passes by such operation to the credit of the agent, whose account increases proportionately, is sufficiently advised to make further inquiry. If without receiving satisfactory explanations such bank continues to discount the notes it becomes the accomplice of the agent, in his abuse of confidence, and responsible towards the principal, in favour of whom there lies a recourse against the bank to recover the amounts fraudulently converted. Such recourse is, however, subject to the condition contained in the second paragraph of Art. 1048 C. C., and, consequently, it no longer exists when the notes which were negotiated have been cancelled.

(62) *Cox vs. Canadian Bank of Commerce*, 16 W. L. R. 512 (Man.)

The Plaintiffs endorsed the note of a trading company, of which they were directors under the belief communicated to them by F., the managing director, who had full charge of the company's banking arrangements, that it would be discounted by the defendants, a chartered bank, and the proceeds placed to the credit of the company. The note was handed to the bank, which later refused to discount it. F. however agreed to leave the note with the bank as collateral security. The Plaintiffs were not made aware of this disposition of the note. They sued to recover possession of the note and for a declaration that they were not liable thereon. The defendants counterclaimed for the amount of the note and moved for a non-suit. Plaintiff's action maintained, and counterclaim dismissed.

(63) *Sterling Bank of Canada vs. Laughlin*, 1 D. L. R. 383, 3 O. W. N. 643.

Notice is not imputed to the public dealing with a bank of clearing house dealings between banks. Unless there is evidence that the customer dealt with the bank subject to the usage of the clearing house, such usages will not *per se* affect the customer's rights against the bank.

(64) *Klock vs. Molson's Bank* (No. 2), 3 D. L. R. 521.

A bank cannot acquire goods, or take security, by an indenture made by an executor to secure a previously unsecured debt of his testator.

(65) *Thien vs. Bank of British North America*, 4 D. L. R. 388, 21 W. L. R. 192.

A bank cannot enforce any claim against horses covered by a lien note given it by a borrower who gave his own notes for the money loaned.

(66) *Bates vs. Kirkpatrick* (No. 2), 7 D. L. R. 806, 22 W. L. R. 386.

(67) *Bates vs. Kirkpatrick*, 4 D. L. R. 395, 21 W. L. R. 607.

A bank may not advance money on a demand note under a contemporaneous agreement that a chattel mortgage should be given as security therefor as soon as it could be prepared.

Bank of B. N. A. vs. Standard Bank, 34 O. L. R. 648.

A customer of the defendant bank drew certain cheques upon it, which were endorsed by the payees to the plaintiff bank; the cheques went through the Toronto Clearing House in the ordinary way; and upon presentation to the defendant bank were dishonoured. The plaintiff bank, being admittedly the lawful holder of the cheques, sued the defendant bank to recover the aggregate amount of the

cheques, less payments made thereon, and was held entitled to recover, upon the ground that there was money standing to the credit of the drawer of the cheques at the time they were presented, or that there would have been such money but for the improper acts of the defendant bank; and that it was, therefore, the duty of the defendant bank, which had received the cheques through the Clearing House, to have marked them good and to have treated them as paid. The effect of the transaction in the Clearing House explained. When the defendant bank, by virtue of the Clearing House transaction, had itself become the holder of the cheques, it had no right, so long as it had or ought to have had funds to answer the cheques, to demand recoupment from the depositing (plaintiff) bank; and the recoupment was obtained by what was in truth a misrepresentation of the real state of affairs. *Quære*, whether, when a customer draws a cheque upon his bank, and there are funds to answer it when presented, the bank should be at liberty to refuse to honour it, retaining the money to meet some demand of its own which has not yet matured, or to pay some other cheque drawn by the customer; or whether, when cheques come in through the Clearing House, in one bundle, which in the aggregate exceed the amount of the customer's credit, the bank should be at liberty to determine which should be paid and which rejected. See *Maclaren*, 4th Ed., p. 405.

Fortier vs. Lemay, 47 Que. S. C. 277.

Where in a contract of sale it is stipulated that the purchasers shall pay the price agreed upon directly to a bank and that the latter shall remit to a tradesman of the vendor a document declaring that the purchasers "are obliged to have all monies due remitted to the bank and as soon as we receive it we will advise you," knowing that the tradesman had advanced goods only on the condition of being paid directly by the bank, the latter by this document incurs an obligation towards these tradesmen not only to notify them when it has received the money from the purchaser, but also to pay over this money even if at the time the bank had claims against the vendor, arising out of the discounting of a note of the purchasers in payment of the selling price and out of other matters.

Northern Crown Bank vs. Great West Lumber Co., 11 D. L. R. 395.

Statutory security; what banks may not lend on; goods. See sec. 80, notes.

Thomson vs. Stikeman, 14 D. L. R., 97.

Land mortgage; mortgage to secure past indebtedness; effect of including future advances. See sec. 80, notes.

Fraser vs. Imperial Bank, 10 D. L. R. 232, 47 Can. S. C. R. 313.

Where a bank in order to secure present or future advances to a customer, has taken from him an assignment vesting in it the legal title to a chose in action arising out of a contract and subsequently receives notice of another assignment thereof made for a present valuable consideration by the customer to a third person before moneys have been advanced upon the security held by the bank, the claim of the bank for advances made after notice is postponed to that of the other incumbrances.

Fraser vs. Imperial Bank et al., sub nom. *Fraser vs. C.P.R.*, 1 D. L. R. 678, 22 Man. L. R., 58, reversed; *Dearle vs. Hall*, 3 Russ. 1; *Hopkinson vs. Rolt*, 9 H. L. Cas. 514; *Bradford Banking Co. vs. Briggs*, 12 App. Cas. 29, and *West vs. Williams* (1899), 1 ch. 132, applied. See also *Kennerley vs. Kestall* (No. 2), 10 D. L. R. 501.

Northern Crown Bank vs. Great West Lumber Co., 17 D. L. R. 593, 7 A. L. R., 183.

The two essential rights of a shareholder in a company embrace (a) the profits, and (b) the voting power, and the inhibition of sub-s. 2, s. 76 (the gist of whose intent is merely that a bank shall not create an alias carrying on business for the bank with its money and giving it the profits), cannot ordinarily be invoked against a bank which did not have the right nor the intention to share in the profits although it did in substance have the voting power. (*Northern Crown Bank vs. Great West Lumber Co.*, 11 D. L. R., 395 reversed).

Northern Crown Bank vs. Great West Lumber Co., 17 D. L. R. 593, 7 A. L. R., 183.

A bank does not engage in a trade or business in contravention of sub-s. 2, s. 76, where its operations are through the medium and intervention of the company chartered, to carry on such trade or business and having a distinct and separate legal existence, although the bank holds a controlling interest and is thus enabled and in reality does direct the affairs of such company, if the bank does not share in the profits nor is the business of the company owned by the bank. (*Northern Crown Bank vs. Great West Lumber Co.*, 11 D. L. R. 395, reversed; and see Falconbridge on Banking, 2nd. Ed., 196).

Royal Bank vs. Whieldon, 22 D. L. R., 647, 21 B. C. R., 267.

An assignment of a chattel mortgage by a mortgagee, a trust company, to a chartered bank on the latter taking over the trust company's securities and giving credit therefor, is not contravention of sec. 76, if the transaction was entered into with good faith and without any intention of evading the provisions of the Act. (*Bank of Toronto vs. Perkins*, 8 Can. S. C. R. 603, referred to). [Reversed in 52 Can. S. C. R.]

Pioneer Bank vs. Can. Bank of Commerce, 25 D. L. R. 385, 34 D. L. R., 531.

A bank's guaranty of the payment of drafts with bills of lading attached, given for a consignment of fruit, implies a condition that the bills should be such as would afford the bank the desired protection; but the fact that the bills of lading were drawn in the name of the seller instead of the buyer, and the shipment being otherwise deliverable upon the order of the sellers' agent without the production of the bills, constitutes no impairment of the security, such as will relieve the bank from liability on its guaranty.

Canadian Bank of Commerce vs. Waldner, 23 D. L. R. 210, 30 W. L. R. 857.

A bank becomes a holder for value of notes deposited with it by its customer as collateral to the latter's promissory note not then due, as soon as the customer's indebtedness to the bank matures or at the time when such indebtedness was increased during the currency of the promissory note in question, particularly where the bank held a general letter of hypothecation in respect of all notes, bills and securities lodged with the bank in connection with the customer's account. (*Merchants Bank vs. Thompson*, 3 D. L. R. 577, referred to).

Thomson vs. Stikeman, 17 D. L. R., 205, 30 O. L. R., 123.

A mortgage taken by a bank on land as security for a large past due indebtedness is not invalidated as to the past indebtedness because it purports to be also for such further and future advances as should be made from time to time to the mortgagor, or which

might be represented by bills or notes made or endorsed by the latter, or any renewals thereof, by reason of the prohibition of s. 76 against lending money on land, where the instrument was not intended by the parties as a mere colourable or collusive scheme to defeat the restrictions of the Act, and no future advances were contemplated or made except in so far as they might be incidental to the working out of the past due account, (*Thomson vs. Stikeman*, 14 D. L. R. 97, 29 O. L. R. 146, affirmed; and see *Falconbridge on Banking*, 2nd. Ed. 188, 202, 210).

Schweiges vs. The Bank of Hochelaga and Goodwyn et al., 47 Que. S. C. 164.

A bank is liable for loss incurred through its neglect to follow specific instructions given it by a shipper of goods, as to the conditions upon which it is to deliver the bill of lading or documents of title to the consignee.

Dominion Bank vs. Markham, 17 D. L. R. 1, 28 W. L. R. 145.

The giving up of property deposited for the purpose of creating a lien destroys the lien unless an intention to preserve it can be shewn. (*Dominion Bank vs. Markham*, 14 D. L. R. 508, reversed; *Re Driscoll*, Ir. T. 1 Eq. 285 applied).

Sterling Bank of Canada vs. Zuber, 32 O. L. R. 123.

The \$150 draft had on its face, embodying the terms on which it was negotiated, and stamped by an official of the bank when it was negotiated, the words: "Surrender documents attached on payment of draft only." The only document attached was the \$250 note:—*Held*, that the bank had no general banker's lien on the note, and was not entitled to collect from the defendant and retain a sum which it had paid for costs in respect of other commercial paper given to it by the customer, even if there had been evidence that the customer was liable for those costs or had acknowledged or promised to pay them. (Judgment of Morson, Jun. Co. C. J., York, varied).

Sovereign Bank vs. Bellhouse, Dillon & Co., 23 Que. K. B. 413.

A person who induces a bank to give him a letter of credit may, by his subsequent conduct, justify the bank in revoking it, but it is otherwise when a customer induces a bank to give him a letter of credit to a third person. In this case the customer cannot, of his own will, compel the bank to cancel the letter, because the contract is not between a customer of the bank and the bank, but between the bank and the third person. A letter of credit issued by a New York bank must be interpreted according to the New York law. When a bank issues a letter of credit to a customer who transfers it to a third person, the bank cannot revoke it. There is nothing in the law which prevents a person for a consideration in favour of another, binding the latter to a third person.

77. Bank to have Lien upon the Stock of its Debtors.—

The bank shall have a privileged lien, for any debt or liability for any debt to the bank, on the shares of its own capital stock, and on any unpaid dividends of the debtor or person liable, and may decline to allow any transfer of the shares of such debtor or person until the debt is paid.

2. Sale of Shares—Notice.—The bank shall, within twelve months after the debt has accrued and become payable, sell such

shares: Provided that notice shall be given to the holder of the shares of the intention of the bank to sell the same, by mailing the notice, in the post office, post paid, to the last known address of the holder, as shown by the records of the bank, at least thirty days prior to the sale.

3. **Transfer.**—Upon the sale being made the president, vice-president or the general manager shall execute a transfer of the shares to the purchaser thereof in the usual transfer book of the bank.

4. **Effect of Transfer.**—Such transfer shall vest in the purchaser all the rights in or to the said shares which were possessed by the holder thereof, with the same obligation of warranty on his part as if he were the vendor thereof, but without any warranty from the bank or by the officer of the bank executing the transfer. 53 V., c. 21, s. 65. Am.

Healey vs. Home Bank, 2 O. W. N. 550, 18 O. W. R. 71.

The bank is by sec. 145 liable to a penalty, if it neglects to sell such shares within 12 months or if it sells them without 30 days' previous notice in writing to the holder of the shares.

Cf. secs. 43 and 44, which impliedly preserve the bank's lien in case of attempted transfer by the debtor, or of a sale under a writ of execution, of the shares to which the lien extends.

The bank also has in the absence of any inconsistent special agreement a general lien for all that is due to it from the customer. The lien extends to all the securities and moneys of the customer in its hands which have not been deposited for a particular purpose, but not to property merely deposited for safekeeping.

The general lien exists only for debts due to the bank, whereas the statutory lien upon its own shares covers not only any debt, but also any liability for a debt.

(1) *In re Chicic & Union Bank vs. Rattray*, 14 Q. L. R. 289 (1888).

Under R. S. C., ch. 120, sec. 89, a bank has a lien on the stock held in it by a member of a firm for a debt due to it by such firm.

When a debt is due a bank, and the debtor acquires stock in the same, such stock is at once affected by the lien of the bank, and moneys realized by the bank out of such stock may be applied by it to the payment of said debt, in preference to another debt contracted subsequently by the same debtor.

Under the common law of the Province of Quebec, a creditor claiming against the estate of a joint debtor is bound to give credit for whatever he may have received for his other joint debtors.

78. **Collateral Securities may be Sold.**—The stock, bonds, debentures or securities, acquired and held by the bank as collateral security, may, in case of default in the payment of the debt, for the securing of which they were so acquired and held, be dealt with, sold and conveyed, either in like manner and subject to the same restrictions as are herein provided in respect of stock of the bank on which it has acquired a lien under this Act, or in like manner as and subject to the restrictions under

which a private individual might in like circumstances deal with. sell and convey the same: Provided that the bank shall not be obliged to sell within twelve months.

2. Right of Sale may be Waived.—The right so to deal with and dispose of such stock, bonds, debentures or securities in manner aforesaid may be waived or varied by any agreement between the bank and the owner of the stock, bonds, debentures or securities. 53 V., c. 31. s. 66. Am.

In the event of default in repayment of an advance made upon the security of stock of corporations other than the bank or upon other security, the bank has a power of sale similar to that which it has in regard to shares of its own stock upon which it has acquired a privileged lien under sec. 77, but without obligation to sell the same within 12 months. This obligation is designed only to prevent a bank's dealing in its own stock as prohibited by sec. 76.

See also sec. 80, which confers the same rights upon the bank in regard to personal or movable property as in regard to real or immovable property mortgaged or hypothecated to it. These rights include the power to purchase or sell given by sec. 81.

A bank selling under the first part of this section merely transfers the right of the pledger and a warranty of title by him, but gives no such warranty itself (see sec. 77). The case is different, however, when the bank sells pursuant to sec. 89.

(1) *Union Bank vs. Elliott*, 14 Man. L. R. 187.

A creditor who has received collaterals as security for a debt is bound, after payment of the debt, to return them or account to the debtor for their face value, in the absence of evidence to show that the respective amounts of them could not be collected.

Driffl vs. McFall, 41 U. C. R., 313 followed.

79. Acquisition of Real Estate.—The bank may acquire and hold real and immoveable property for its actual use and occupation and the management of its business, and may sell or dispose of the same, and acquire other property in its stead for the same purpose.

2. Return to Minister.—The bank shall annually, during the month of January, make to the Minister a return showing in detail the fair market value of its real and immovable property held under this section. 53 V., c. 31. s. 67.

80. Mortgages and Hypotheques of Realty.—The bank may take, hold and dispose of mortgages and hypotheques upon real or personal, immovable or movable property, by way of additional security for debts contracted to the bank in the course of its business.

2. As to Personality.—The rights, powers and privileges which the bank is by this Act declared to have, or to have had, in respect of real or immovable property mortgaged to it, shall be held and possessed by it in respect of any personal or movable

property which is mortgaged or hypothecated to the bank. 53 V., c. 31, s. 68.

Bates vs. Kirkpatrick, 4 D. L. R. 395, 21 W. L. R. 607.

A chattel mortgage taken by a bank cannot be sustained, as one given for additional security for a debt contracted in the usual course of business, where money was advanced upon a demand note under an agreement that it should be secured by a chattel mortgage as soon as it could be prepared.

Canadian Bank of Commerce vs. Wilson (1908), 9 W. L. R. 359, affirmed (1909), 11 W. L. R. 539.

Mortgage of land made to bank. *Held*, that as the land mortgaged herein was taken to secure a present advance it is illegal and void under sec. 64 of the Bank Act 1890, 53 Vict., c. 31.

Canadian Bank of Commerce vs. Barrette, 41 S. C. R. 561.

B. sold property to the Syndicat Lyonnais du Klondyke, and took, as security for the price, mortgages on real and personal property and a promissory note, and transferred the securities to the bank to secure his present and future indebtedness to the bank. He signed a document authorizing the bank to realize on the same in their discretion, to grant extensions and give up securities, accept compositions, grant releases and discharges, and otherwise deal with them as they might see fit without prejudice to B's liability. The note not being paid at maturity, the bank sued the Syndicate and B. upon it and on the covenants in the mortgages, and obtained judgment against both. In the same action, the Syndicate on counter claim for damages for deceit, had judgment against B., which was eventually set aside, but, while it existed, the bank made a settlement with the Syndicate and discharged the latter from all liability on the judgment of the bank, on payment of over \$20,000 less than the debt. B. was not a party to this settlement, and the bank afterwards refused to give him a statement of his account with the bank. In an action by B. for an account and to have the bank enjoined from further dealings with the securities:—*Held*, that the power given to the bank to deal with the securities was to be exercised for the purpose of liquidating B's debt, and, as to the surplus, for B's benefit, that, the settlement having been made solely for the benefit of the bank and in sacrifice of B's interests, the bank violated their duty, and had not satisfied the onus of shewing that, had the whole amount of the judgment been recovered from the Syndicate, B. would not have benefited thereby. Judgments in *Barrette vs. Canadian Bank of Commerce*, 7 W. L. R. 659, 8 W. L. R. 927 affirmed.

The section is one of the important exceptions to the prohibition of sec. 76 against lending on the security or mortgage of lands, ships or goods.

Primarily "contracted in the course of its business" means contracted in the past, and refers to advances made or indebtedness incurred prior to the giving of the mortgage.

Sometimes, however, it is sought to support a mortgage which is taken contemporaneously with the discounting a bill or note. In such a case it has been said that it would be a question of fact for the judge or jury to determine whether the mortgage was in truth taken to secure the transaction on the bill or note, or whether the bill or note was created for the mere purpose of upholding and giving colour to the mortgage—a question of fact upon which the conclusion would be in general so uncertain as to make the mortgage very doubtful security.

(1) *Bank of Upper Canada vs. Killaly*, 21 U. C. Q. B. 9 (1861).

One P., in January, 1860, agreed to build for the Grand Trunk Railway Co. 100 cars of a specified pattern to be delivered in four months and a half from that time on their track at Toronto free of charge; the company to pay \$825 for each car, payments to be made monthly on the estimate made by a person appointed by the company on materials furnished and work done; "payments to be made to the satisfaction of the Bank of Upper Canada, who are to act as receivers." All but 16 cars were delivered, and these 16, the inspector of the company had approved of, and they were sent to the Suspension Bridge to wait for the springs, which the company were to furnish.

On the 24th of September, 1860, the bank and the Grand Trunk Railway Co. entered into an agreement, reciting the contract, and that the bank had made large advances on account of it, and had agreed to advance the necessary sum to complete it and to acquire the title to the cars. The company then assigned all their interest in the agreement and cars to the bank, and the bank leased them back to the company for three years at a rate named, with a proviso that on payment of their debt to the bank the cars should revert to the company. After this, P. received moneys from the bank on account of the contract.

Held, that by the agreement the cars vested in the company before delivery; that the bank were not precluded by their charter from taking security upon them, and that they were entitled therefore as against an executive creditor of P.

(2) *Bank of Toronto vs. Perkins*, 8 S. C. R. 603 (1883).

B., on the 19th January, 1876, transferred to the Bank of T. (appellants), by notarial deed, an hypothec on certain real estate in Montreal, made by one C., to him, as collateral security for a note which was discounted by the appellants and the proceeds placed at P's credit on the same day on which the transfer was made. The action was brought by the appellants against the insolvent estate of C. to set aside a prior hypothec given by C., and to establish their priority.

Held (affirming the judgment of the Court of Queen's Bench), that the transfer by B. to the Bank of T. was not given to secure a past debt, but to cover a contemporaneous loan, and was, therefore, null and void, as being in contravention of the Banking Act, 34 V., ch. 5, s. 40.

(3) *Grant vs. La Banque Nationale*, 9 O. R. 411 (1885).

Advances made on a pledge of certain timber limits to the Province of Quebec, which pledge purported on its face to be "for advances made and to be made," was valid as to advances made before the pledge, but that as to the future advances the pledge of the timber limits was invalid as being in contravention of 34 Vic., chap. 5, sec. 40.

(4) *Bathgate vs. Merchants' Bank*, 5 Man. L. R. 210 (1888).

The full and true consideration for which a bill of sale is given must be set out in it with substantial accuracy, otherwise the bill is void. G., being indebted to B., gave his note for the amount, which B. discounted at a chartered bank. As security for the discount, G. executed a chattel mortgage to the bank. At maturity B. took up the note. Afterwards he procured from G. a bill of sale of the goods. The bill recited the mortgage, and an agreement to sell

the goods for \$100 over the mortgage. The expressed consideration was the premises and \$100. The \$100 was not paid or intended to be paid.

Held, that the mortgage was void under the Banking Act. (Sec. 45).

(5) *In re McCaffrey & La Banque du Peuple*, R. J. Q., 5 S. C. 135 (1894).

An alleged infringement of The Banking Act (*e.g.*, taking security for future advances), though a matter affecting public policy, will not support a contestation of the bank's claim unless pleaded and legally proved.

(6) *Gillies vs. Commercial Bank*, 10 Man. L. R. 460 (1895).

The plaintiff, a married woman, carried on business separately from her husband, and, being largely indebted to numerous creditors and to the defendant bank, applied to the bank for an advance. This was agreed to, on the plaintiff giving the bank a mortgage on her real estate and stock and all future stock to be acquired during the currency of the mortgage. She also assigned to the bank all her book debts as further security.

Held, (1) that the securities taken were valid under s. 48 of the Banking Act then in force, R. S. C., c. 120.

(2) That the plaintiff had no equity under the circumstances to compel the bank to perform its covenant to pay her creditors without offering to perform the agreement on her part, and to pay her debt to the bank.

(3) That under the circumstances no trust was created by the said covenant of the bank in favor of the creditors referred to therein, such covenant having been intended to refer only to the proceeds of the plaintiff's sales and to deposits and collections of book-debts while the business was being carried on, and having been given only with a view to enable the plaintiff to keep the business going.

(7) *Bank of Hamilton vs. Donald*, 13 Man. L. R. 378.

Under section 80 of the Bank Act, security may be taken from the owner of horses for an existing debt by a Bill of Sale of the horses, which expressly states that it is taken only by way of additional security for the debt, and section 76 of the Act does not prevent the bank from recovering on promissory notes made in its favour by a person who purchased the horses from the transferrer.

(8) *Dominion Bank vs. Oliver*, 1889, 17 O. R. 402.

If a bank holding a mortgage as additional security for the payment of certain notes, substitutes for the notes renewals from time to time, without, however, receiving actual payment, the whole series of notes and renewals form links in the same chain of liability which is secured by the mortgage. Although as a matter of bookkeeping, the bank may have treated the first notes, and the subsequent substituted notes, as paid by the application of the proceeds from time to time of the renewals, there is no payment in fact of the notes for which mortgage was given.

No special priority is given by this section to mortgages authorized by it. It allows mortgages to be taken by the bank under certain circumstances, but their validity and priority must be determined by provincial law.

Bank of Montreal vs. Low Lumber Co., Ltd., 14 D. L. R., 894; 44 Que. S. C. 391.

A bank which has made advances to a lumber company upon assignments and statutory receipts under the Bank Act, whereby the company thereafter held the logs and lumber as bailees of the bank, may maintain an action against the company for the balance due them in respect of such advances without having rendered prior to the action an account of the proceeds realized under the security so held as collateral; it is sufficient that the details of such accounting should be furnished under oath in the action, and that the defendant has had an opportunity of contesting its accuracy.

Dom. Bank vs. Markham Co., Ltd., 14 D. L. R. 508; 26 W. L. R. 101.

Where, as collateral to advances, the borrower has deposited with a bank a chattel mortgage made by another in his favor with a verbal agreement with the bank manager that the same should be held as security, the bank does not lose its lien by parting with the deposited document of title for the purpose of allowing the borrower to proceed upon same and realize his claim. (Ex parte Morgan, 12 Ves. 6, applied).

Thomson vs. Stikeman, 14 D. L. R. 97, 29 O. L. R. 146.

A mortgage taken by a bank on land as security for a large past due indebtedness is not invalidated as to the past indebtedness because it purports to be also for such further and future advances as should be made from time to time to the mortgagor, or which might be represented by bills or notes made or endorsed by the latter, or any renewals thereof, by reason of the prohibition of sec. 76 against lending money on land, where the instrument was not intended by the parties as a mere colourable or collusive scheme to defeat the restrictions of the act, and no future advances were contemplated or made except in so far as they might be incidental to the working out of the past due account.

Eastern Townships Bank vs. Pickard, 13 D. L. R. 389.

Sect. 80 of the Bank Act allows banks to take mortgages and hypothecs on the property of their debtors only in the case of debts already in existence.

Northern Crown Bank vs. Great West Lumber Co., 11 D. L. R. 395, 24 W. L. R. 477.

A chattel mortgage, taken by a bank in violation of clause (c) of sub-sec. 2 of sec. 76, prohibiting banks from making advances upon the security of any goods, wares and merchandise (except as authorized by the Act), may be valid and enforceable if taken to secure an existing indebtedness, but not otherwise.

81. Purchases of Realty.—The bank may purchase any lands or real or immovable property offered for sale,—

(a) under execution, or in insolvency, or under the order or decree of a court, as belonging to any debtor to the bank; or,

(b) by a mortgage or other encumbrancer, having priority over a mortgage or other encumbrance held by the bank; or,

(c) by the bank under a power of sale given to it for that purpose, notice of such sale by auction to the highest bidder having been first given by advertisement for four weeks in a newspaper published in the county or electoral district in which such lands or property is situate,

in cases in which, under similar circumstances, an individual

could so purchase, without any restriction as to the value of the property which it may so purchase, and may acquire a title thereto as any individual, purchasing at sheriff's sale, or under a power of sale, in like circumstances could do, and may take, have, hold and dispose of the same at pleasure. 53 V., c. 31, s. 69. Am.

The powers given by this section also extend to personality; see sec. 80 and sec. 78.

Ontario Bank vs. McAllister (1910), 30 C. L. T. 688, 43 S. C. R. 338.

A bank entered into an agreement with a company heavily in its debt carrying on a milling business, which agreement provided that the company should pay the bank \$10,000 and surrender all its assets including an assignment of the lease of its business premises and that the bank should assume payment of its debts and release it from all further liabilities. By a subsequent agreement it was provided that the business of the company should be carried on as before with a view to reducing the debt due to the bank and disposing of it as a going concern as soon as possible, the bank to indemnify against any liabilities incurred while it was so carried on. No assignment of the lease of the business premises to the bank was executed and the lessors having brought action against the company for rent due thereunder, the bank was brought in as a third party by the company claiming indemnity against payment of such rent under said agreements:—*Held*, affirming the judgment of the Court of Appeal (17 Ont. App. R. 145) Duff and Anglin, J. J. dissenting, that the bank should indemnify the company against such payment, the agreements to take as assignment of the lease and to carry on the business as a going concern not being illegal as a violation of provisions of "The Bank Act."—Appeal dismissed with costs.

Union Bank of Canada vs. Bates, 118 D. L. R. 269, 24 Man. L. R. 619.

Sec. 81 confers on a mortgagee bank the rights of an individual mortgagee as to buying in under a prior mortgage.

82. Bank may Acquire Absolute Title to Mortgaged Premises.—The bank may acquire and hold an absolute title in or to real or immovable property mortgaged to it as security for a debt due or owing to it, either by the obtaining of a release of the equity of redemption in the mortgaged property, or by procuring a foreclosure, or by other means whereby, as between individuals, an equity of redemption can, by law, be barred, or a transfer of title to real or immovable property can by law be effected, and may purchase and acquire any prior mortgage or charge on such property.

2. No Act or Law to Prevent.—Nothing in any charter, Act or law shall be construed as ever having been intended to prevent or as preventing the bank from acquiring and holding an absolute title to and in any such mortgaged real or immovable property, whatever the value thereof, or from exercising or acting upon any power of sale contained in any mortgage given to or held

by the bank, authorizing or enabling it to sell or convey any property so mortgaged. 53 V., c. 31, s. 71 ; 63-64 V., c. 26, s. 14.

The right of a bank to sell in pursuance of a power of sale contained in a mortgage is impliedly recognized by sec. 81.

The powers given by this section extend also to personalty—see sec. 80.

83. Property to be sold within Certain Time.—No bank shall hold any real or immovable property, howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the date of the acquisition thereof, or any extension of such period as in this section provided, and such property shall be absolutely sold or disposed of, within such period or extended period, as the case may be, so that the bank shall no longer retain any interest therein unless by way of security.

2. Extension of Time.—The Treasury Board may direct that the time for the sale or disposal of any such real or immovable property shall be extended for a further period or periods, not to exceed five years.

3. Twelve Years.—The whole period during which the bank may so hold such property under the foregoing provisions of this section shall not exceed twelve years from the date of the acquisition thereof.

4. Property not Sold Liable to Forfeiture—Proviso.—Any real or immovable property, not required by the bank for its own use, held by the bank for a longer period than authorized by the foregoing provisions of this section shall be liable to be forfeited to His Majesty for the use of the Dominion of Canada: Provided that,—

(a) no such forfeiture shall take effect until the expiration of at least six calendar months after notice in writing to the bank by the Minister of the intention of His Majesty to claim the forfeiture; and,

(b) the bank may, notwithstanding such notice in writing to the bank by the Minister of the intention of His Majesty to claim the forfeiture; and,

5. Provisions Apply to Realty now Held.—The provisions of this section shall apply to any real or immovable property heretofore acquired by the bank and held by it at the time of the coming into force of this Act. 63-64 V., c. 26, s. 14.

The words "howsoever acquired" refer to the acquiring of the absolute title in any of the ways mentioned in sec. 82. The seven years' limitation begins to run from the getting in of the absolute title, not from the taking of the security.

84. Loans on Standing Timber.—The bank may lend money upon the security of standing timber, and the rights or licenses held by persons to cut or remove such timber.

84a. Loans to Receiver or Liquidator under Winding-up Acts.—Security Fixed by Court.—The bank may lend money to a receiver, to a receiver and manager, or to a liquidator appointed under any winding-up Act, provided such receiver, receiver and manager or liquidator has been duly authorized or empowered to borrow; and, in respect of any money so lent, the bank may take security, with or without personal liability, from such receiver, receiver and manager, or liquidator, to such an amount, and upon such property and assets, as may be directed or authorized by any court of competent jurisdiction. 63-64 V., c. 26, s. 16. Am.

85. Advances for Building Ships.—Every bank advancing money in aid of the building of any ship or vessel shall have the same right of acquiring and holding security upon such ship or vessel, while building and when completed, either by way of mortgage, hypothecation, hypothecation, privilege or lien thereon, or purchase or transfer thereof as individuals have in the province wherein the ship or vessel is being built.

2. Rights and Obligations.—The bank may, for the purpose of obtaining and enforcing such security, avail itself of all such rights and means, and shall be subject to all such obligations, limitations and conditions, as are, by the law of such province, conferred or imposed upon individuals making such advances. 53 V., c. 31, s. 72.

This section forms an exception to sec. 76, which prohibits the lending of money upon the security, of any ships or other vessels.

Secs. 80 and 85, being read together, permit a bank to acquire and hold security upon a ship, (1) for the repayment of advances made in aid of the building of the ship, (2) by way of additional security for any debt contracted to the bank in the course of its business.

86. Warehouse Receipts and Bills of Lading.—The bank may acquire and hold any warehouse receipt or bill of lading as collateral security for the payment of any debt incurred in its favour, or as security for any liability incurred by it for any person, in the course of its banking business.

2. Effect of Taking.—Any warehouse receipt or bill of lading so acquired shall vest in the bank, from the date of the acquisition or owner thereof; or,

(a) all the right and title to such warehouse receipt or bill of lading and to the goods covered thereby of the previous holder or owner thereof; or,

(b) all the right and title to the goods, wares and merchandise mentioned therein of the person from whom such goods, wares and merchandise were received or acquired by the bank, if the warehouse receipt or bill of lading is made directly in favour of the bank, instead of to the previous holder or owner of such goods, wares and merchandise. 53 V., c. 31; s. 73; 63-64 V., c. 26, s. 15, Am.

La Banque Nationale vs. Royer (1910), 20 Que. K. B., 341.

A clerk in the employ of wholesale grocers to whom the possession of a part of their stock is committed, being set apart in premises leased to him by them at a nominal rental, is a "bailee in actual, visible and continued possession" of the goods, within the meaning of sec. 2, sub-sec. g. of the Bank Act, ch. 29, R. S. C., 1906. A warehouse receipt of the goods delivered by him to a bank, as security for advances to the owners, his employers, confers upon it the rights mentioned in sec. 86 of the same Act. No privilege is acquired by a bank on goods in a warehouse receipt, given it as security for a loan to an insolvent of whose insolvency it is aware.

Williamson vs. Rhind, 22 L. C. J., 166 (1877).

Millou vs. Kerr, 8 S. C. Can., 474 (1880).

A warehouseman cannot give a valid warehouse receipt covering goods not in his possession.

Re Central Bank—Can. Shipping Case (1891), 30 C. L. T. 281, affirmed 21 O. R., 515.

A bank in Ontario, under an agreement with a customer, domiciled in Ontario, advanced money to him to enable him to buy cattle in the Province which, under the agreement, when purchased, were to be forwarded by rail by him to Montreal, and to be shipped by steamship thence to Liverpool, the bank having no control over the cattle until they reached the vessel, when they were to be received by the steamship for the bank, and the customer's possession and control over them was to end; bills of lading therefor in favour of the bank being then signed. The cattle were purchased and sent to Montreal as agreed on. On arriving at the steamship, and before the bills of lading were made out, a creditor of the customer attached the cattle under a writ of *saisie-arrest*, but the steamship owners, disregarding the writ, signed the bills of lading and conveyed the cattle to their destination. The creditor subsequently recovered a judgment for the value of the cattle, in the Province of Quebec, against the steamship owners, which the latter having paid sought to prove on the estate of the bank in winding-up proceedings, but the claim was disallowed by the master. On appeal from him it was—

Held, that apart from the Banking Act, R. S. C., c. 120, by virtue of the agreement between the bank and its customer the possession and a special property in the goods passed to the bank, of which the steamship owners were aware, and having assented thereto upon receipt of the cattle, before any process was served, must be taken to have held the cattle for the bank. The agreement having been made, and the parties to it being domiciled in Ontario, the rights of the parties to it must be determined by the laws of Ontario, and not those of Quebec, which, however, were not shewn to be different—

Held, also, that the rights of the parties were entirely governed by the provisions of the Banking Act and following, though not altogether approving.

Merchants' Bank vs. Suter, 24 Gr. 356, that under s. 53, s-s. 4 of the Act, the bank had, under the agreement and the facts proved, an equitable lien upon the cattle from the time of the making of the agreement which prevailed over the attachment;—

Held, lastly, that the bank "acquired" the bills of lading within the meaning of the Banking Act as soon as the cattle were received by the steamship, although it did not at that time actually "hold" the bills. The appeal was therefore dismissed.

This section and sec. 88 must be read subject to the provisions of sec. 90. They are both important exceptions to the provisions of sec. 76, which forbid a bank to lend money or make advances upon the security of any goods, wares and merchandise. For the history of the legislation, see Falconbridge, p. 164.

The method of acquiring is not prescribed. A warehouse receipt or bill of lading may be transferred either by delivery, after endorsement in blank, or by special endorsement to the bank.

Warehouse receipt as used in this Act is defined by sec. 2 (g).

A statement of the place where the goods are stored is not essential to the bank's security.

A BILL OF LADING IS DEFINED BY SEC. 2 (H).

The debt or liability must be incurred either contemporaneously with the taking of the security or upon a written promise or agreement, etc. See sec. 90.

The words "goods, wares and merchandise" are defined by sec. 2 (f).

The transfer of the receipt, etc., vests in the bank only the particular goods mentioned in such receipt, and not goods substituted for such goods. Cf., however, sub-sec. 2 of sec. 88, as to goods substituted in cases within that sub-section, and see sub-sec. 1 of sec. 89 as to goods manufactured or produced from the goods covered by a receipt, etc.

As to realization of security, see sec. 89, sub-sec. 3.

Sec. 143 renders it a criminal offence to make any false statement in any warehouse receipt, etc., given to a bank under this section.

(1) *Bank of British North America vs. Clarkson*, 19 U. C. C. P. 182 (1869).

M. & Co., being indebted to the plaintiffs on certain overdue notes, it was agreed that plaintiffs should discount a further note for them, with the proceeds of which, it was understood, the overdue paper should be retired; that M. & Co., should hand over to plaintiffs certain warehouse receipts for wool, stored in their warehouse, as collateral security. This note was accordingly, on 23rd January, 1868, discounted by plaintiffs, and the old notes duly retired, an agreement being signed by M. & Co. at the time the discount, reciting that they had endorsed over the receipts as collateral security for the note, etc., etc. The receipts, nearly all in the same form, were as follows:

"Warehouse Receipt.

"Received in store in our warehouse, at . . . from sundry parties, 17,900 pounds batting, to be delivered pursuant to the order of the Bank of British North America, to be endorsed hereon. The said batting is separate from, etc., etc." Neither M. & Co., nor the bank, endorsed the receipts.

Held, that they were not warehouse receipts under the statutes

referred to, and that the bank could not, therefore, claim the property covered by them.

Per Hagerty, C. J., that the transaction of the 23rd January, was not in substance, though in form, a present advanced to M. & Co., but merely a mode adopted of paying off an already existing debt.

(2) *Williamson vs. Rhind*, 22 L. C. J. 166 (1877).

A warehouse receipt given by a warehouseman when the goods in question are not in his possession is null and void.

(3) *Milloy vs. Kerr*, 8 S. C. R. 474 (1880).

A warehouse receipt given by a warehouseman for goods which were not in his actual possession was not a valid warehouse receipt.

Held, that M. never had any actual possession, control over, or property in the goods in question, so as to make the receipt given by M., under the circumstances in this case, a valid warehouse receipt within the meaning of the clauses in that behalf in the Banking Act.

(4) *Merchants' Bank vs. Smith*, 8 S. C. R. 512 (1884).

Held, that it is not necessary to the validity of the claim of a bank under a warehouse receipt given by an owner who is a warehouseman and wharfinger, and has the goods in his possession, that the receipt should reach the hands of the bank by indorsement.

(5) *Bank of Hamilton vs. Noye*, 9 O. R. 631 (1885).

In this case the question of the validity of warehouse receipts was decided. It was held that a party having undertaken to keep certain "grain separate and distinguishable from other grain" and having failed to do so, it became his duty to enable the plaintiff to recover what the receipts called for or its equivalent.

(6) *Stevenson vs. Bank of Commerce*, 23 S. C. R. 531 (1892).

On an appeal to the Supreme Court, it was held that the finding of the courts below [see R. J. Q. 1 Q. B. 171 (1892)] of the fact of the bank's knowledge of their debtor's insolvency was sustained by the evidence in the case, and there had therefore been a fraudulent preference made to the bank by the insolvent in transferring over to it all his customers' paper not yet due.

(7) *Fall vs. Shortley*, R. J. Q. 1 S. C. 389 (1892).

The transfer of a warehouse receipt to secure a past due indebtedness is not in itself an unlawful act, but such transfer gives the transferee none of the exceptional rights which would result from a transfer under C. S. C., ch. 54, s. 9.

It gives him no right upon the goods represented by the receipt, such goods, notwithstanding the transfer, remaining the property of the transferrer free of any lien whatever in favor of the transferee.

(8) *Tennant vs. Union Bank*, 19 O. A. R. 1 (1893).

The plaintiff was the assignee for the benefit of the creditors of a firm of saw millers who had obtained large advances from the defendants on the security of a third person's promissory note endorsed by the firm. To this third person, in pursuance of a previous written agreement to that effect, whereby the firm pledged to him a quantity of logs on timber limits and the lumber to be manufactured therefrom, the firm gave warehouse receipts on logs described as being in certain lakes in transit to the mills, and also sub-

sequently in conformity with an agreement with the bank when the advances were made, on lumber in the mill yards manufactured from the logs pledged, and the warehouse receipts were by him endorsed over to the bank.

Held, that the warehouse receipts were bad as to the logs, the likes not being "places kept by the signers of the receipts."

Held, further, Burton, J. A., dissenting, that the warehouse receipts were good as to the lumber, and had been validly acquired by the bank by endorsement from the holder under sub-section 2 of section 53 and section 54 of R. S. C., chap. 120.

(9) *Young vs. Demers*, R. J. Q., 4 Q. B. 364 (1895).

A wood, salt or coal merchant, who occupies a wharf for the purposes of his trade, where he receives and gives delivery of his merchandise, has not the quality to give a receipt of this merchandise which gives to the prejudice of third parties special rights which warehouse keepers can create through their quality of warehouse keepers for the merchandise of others.

(10) *Armstrong vs. Buchanan*, 35 N. S. Repts. 559.

B. being indebted to the bank, gave them a document purporting to be a warehouse receipt, and also a general transfer by bill of sale. The bank took possession of a portion of the goods covered by the documents, and removed them, and was proceeding with the removal of the goods when the removal was forbidden by one of B's. clerks. Two actions of replevin brought by the bank to recover possession of the remainder of the goods were compromised by B., who agreed that the bank should take the goods and sell them, and credit him with the amount received.

Held, that notwithstanding any irregularities under the Bank Act, the title of the bank was complete under the compromise made between the bank and B., and that the plaintiff who purchased a portion of the goods from the bank was entitled to recover against the defendant's sheriff, who levied on the goods under the execution against B. *Held* also, assuming it to be correct that the security on the goods held by the bank was void under the provisions of the Act, not being for a present debt, but for a past due debt, and that the bank were not entitled to hold such security against the creditors of B., that the bank were not obliged to rest their title on the documents, and that its defects, if any, would not effect the subsequent transactions by which the bank became the actual purchasers of the goods and dealt with them as their property.

(11) *Imperial Bank vs. Hull*, 4 Terr. L. R., 498 (1901).

Held (1) Where a consignor of perishable goods draws through a Bank upon the consignee at sight for the amount of the contract price and attaches the bill of lading to the draft, the consignee is entitled to examine the goods before accepting them or paying the draft;

(2) If it is necessary to obtain the bill of lading from the Bank and surrender it to the carriers in order to make the examination, the fact that the consignee does so, and thereby makes it impossible to return the bill of lading to the Bank, does not render him liable to pay the draft;

(3) Under sec. 73 of the Bank Act, the bank has no other or higher rights than the consignors.

(4) The fact that the bank endorses the bill of lading to the consignee in order to enable him to examine the goods does not transfer the right of property in them to the consignee, and if the latter deals with the goods as his own by reshipping and selling them he becomes liable to the bank in an action for conversion, for the goods or their value;

Where, therefore, the Bank, in such circumstances, sued for the amount of the draft, and the defendant pleaded that a large portion of the goods were worthless, and paid into Court, the invoice price of the portion sold by him, and it appeared in evidence that the portion unsold were absolutely worthless the Court directed an amendment of the statement of claim so as to make it an action of detainue, and gave judgment for the amount paid into Court, but without costs.

Imperial Bank vs. Hull, 5 Terr. L. R., 313 (1902).

The judgment of Rouleau, J. (4 Terr. L. T. 498) varied by striking out the order to amend the plaintiffs' statement of claim as unnecessary, and directing that judgment be entered for the defendant, and that the amount paid into Court by the defendant be paid out to the plaintiffs; the plaintiffs to have the costs of the action up to the time of the second payment into Court; the defendants to have the general costs of the action after that date, and the plaintiffs to have the costs of the issues upon which they succeeded.

Per McGuire, C. J. (1) Against the contention of the plaintiffs that the measure of damages was the face value of the Bill of Exchange, inasmuch as the defendants' conduct prevented them from returning the bill of lading to the consignors and demanding back the amount advanced upon the security, that the measure of damages was the value—but only the actual value having regard to their condition and quality—of the goods to the plaintiffs, not necessarily what the defendant could or did sell them for. The plaintiffs' contention was unsound, inasmuch as upon the dishonour of the draft they were entitled to look to the drawers at once and were not obliged to give credit for the amount of the collateral security until they had actually realized thereon, *Molsons Bank vs. Cooper*. The bill of lading was of no value except to give the plaintiffs the property, and the right to the possession of the goods. The damages in an action by either the bank or the consignors against either the defendant or stranger would have been the same, viz., the value of the goods because now by virtue of section 51 of the Sales of Goods Ordinance, any breach of warranty—here the defective quality of the goods—can be set up in diminution of extinction of the price sued for.

(2) The difference in language between the Imperial Bills of Lading Act (18-19 V., c. 111, s. 1), and the Bank Act (defining the position of an endorsee of a bill of lading), considered.

Per Wetmore, J. (Richardson and Scott, J. J., concurring.)

(1) Had the consignors as in *Shepherd vs. Harrison* sent the bill of exchange with the bill of lading attached, directly to the defendant, they might have sued for the price on the basis of the defendant's acceptance of the goods or for damages on the basis of a conversion. In the former case the defendant could have set up the defective quality of the goods in diminution of the price, in the latter case the measure of damages would have been the value of the goods to the consignors, which would probably be the same as

in the former case. The bank as the holders of the bill of lading were in no better position than the consignors.

(2) *Seemle*, the right and title vested in the plaintiffs under s. 73 of the Bank Act by virtue of the bill of lading was only the right and title to the goods, and not contractual rights which the consignor had against the purchaser.

Circumstances raising an implied warranty that goods are merchantable considered.

87. When Previous Holder is an agent.—If the previous holder of such warehouse receipt or bill of lading is any person,—

(a) entrusted with the possession of the goods, wares and merchandise mentioned therein, by or by the authority of the owner thereof: or,

(b) to whom such goods, wares and merchandise are, by or by the authority of the owner thereof, consigned; or,

(c) who, by or by the authority of the owner of such goods, wares and merchandise, is possessed of any bill of lading, receipt, order or other document covering the same, such as is used in the course of business as proof of the possession or control of goods, wares and merchandise, or as authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such a document to transfer or receive the goods, wares and merchandise thereby represented;

the bank shall be, upon the acquisition of such warehouse receipt or bill of lading, vested with all the right and title of the owner of such goods, wares and merchandise, subject to the right of the owner to have the same retransferred to him if the debt or liability, as security for which such warehouse receipt or bill of lading is held by the bank, is paid.

2. Presumption of Possession.—Any person shall be deemed to be the possessor of such goods, wares and merchandise, bill of lading, receipt, order or other document as aforesaid,—

(a) who is in actual possession thereof; or

(b) for whom, or subject to whose control, such goods, wares and merchandise are, or bill of lading, receipt, order, or other document is held by any other person. 53 V., c. 31, s. 73; 63-64 V., c. 26, s. 15. Am.

(1) *Barry vs. Bank of Ottawa*, 1908, 17 O. L. R. 83.

The agent within the meaning of sec. 87 can give security under sec. 86, but cannot do so under sec. 88.

Auld vs. Traders Bank of Canada, 16 W. L. R. 24 (Alta.).

Bank held in damages for wrongfully delivering up documents when chargeable with notice that they should be held for another creditor of customer who pledged them to the Bank.

La Banque d'Hochelaga vs. Larue. 3 Alta. R. 42, 13 W. L. R. 114.

Where an instrument in writing which creates a right is pledged, the right as well as the instrument is pledged. Where a

pledgee without the consent of the pledgor parts with the subject of the pledge, the pledgee is liable in damages to the pledgor to the extent of the value of the pledge. Where a negotiable instrument is pledged and is parted with by the pledgee the value of the negotiable instrument is *prima facie* its face value and the onus is upon the pledgee who parts with it to prove otherwise. A bank is bound by the acts of its manager in dealing with the bank's property received by him in the course of business even if such dealing is wrongful and for his own purposes, if by such dealings innocent persons not taking part in the transaction are injured, but otherwise in the case of parties concerned having knowledge of the fact of the bank manager's personal interest.

88. Loans upon Live or Dead Stock.—The bank may lend money to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of or dealer in live stock or dead stock or the products thereof, upon the security of such products, or of such live stock or dead stock or the products thereof.

2. Grain.—The bank may lend money to a farmer upon the security of his threshed grain grown upon the farm.

3. Loans to Wholesale Manufacturers.—The bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by him, or procured for such manufacture.

4. Removal of Goods—Substitution—Security.—If, with the consent of the bank, the products, goods, wares and merchandise, live stock or dead stock or the products thereof, upon the security of which money has been loaned under the authority of this section, are removed and other products, goods, wares and merchandise, live stock, or dead stock or the products thereof of substantially the same character are respectively substituted therefor, then to the extent of the value of the products, goods, wares and merchandise, or live stock or dead stock or the products thereof so removed the products, goods, wares and merchandise, live stock or dead stock or the products thereof so substituted shall be covered by such security as if originally covered thereby; but failure to obtain the consent of the bank to any such substitution shall not affect the validity of the security either as respects any products, goods, wares and merchandise, or live stock or dead stock or the products thereof actually substituted as aforesaid or in any other particular.

5. Owner may give the Security.—Any such security, as mentioned in the foregoing provisions of this section, may be given by the owner of the said products, goods, wares and merchandise, stock or products thereof or grain.

6. **Form of Security.**—The security may be taken in the form set forth in Schedule C to this Act, or to the like effect.

7. **Same Rights as upon Warehouse Receipts.**—The bank shall, by virtue of such security, acquire the same rights and powers in respect of the products, goods, wares and merchandise, stocks or products thereof or grain covered thereby, as if it had acquired the same by virtue of a warehouse receipt; provided, however, that the wages, salaries or other remuneration of persons employed by any wholesale purchaser, shipper or dealer, by any wholesale manufacturer, or by any farmer in connection with any of the several wholesale businesses referred to, or in connection with the farm, owing in respect of a period not exceeding three months, shall be a charge upon the property covered by the said security in priority to the claim of the bank thereunder, and such wages, salaries or other remuneration shall be paid by the bank if the bank takes possession or in any way disposes of the said security or of the products, good, wares and merchandise, stock or products thereof, or grain covered thereby. 53 V., c. 31, s. 74; 63-64 V., c. 26, s. 17. Am.

8. The bank may lend money to the owner, tenant or occupier of land for the purchase of seed grain upon the security of any crop to be grown from such seed grain.

9. The security may be taken in the form set out in Schedule G. to this Act or in a form to the like effect (5 Geo. V., c. 1).

10. The bank shall by virtue of such security acquire a first and preferential lien and claim for the sum secured and interest thereon upon the seed grain purchased and the crop covered by the security, as well before as after the severance of the crop from the soil, and upon the grain threshed therefrom, and the bank shall by virtue of such security acquire the same rights and powers in respect of such seed grain and of the grain so threshed as if it had acquired such rights and powers by virtue of a warehouse receipt (5 Geo. V., c. 1).

11. The bank shall have the right, through its servants or agents in case of default in payment of the money lent or in case of neglect to care for and harvest the crop, or in case of any attempt to dispose of the crop without the consent of the bank, or in case of the seizure of the crop under process of law, to enter upon the land upon which the crop is grown to take possession of, care for and harvest the crop and thresh the grain therefrom. (5 Geo. V., chap. 1, s. 1).

12. The bank may lend money to a farmer and to any person engaged in stock raising upon the security of his live stock. "Live stock," for the purposes of this sub-section and of sub-sections thirteen to twenty, both inclusive, means horses and mares, bulls,

cows, oxen, bullocks, steers, heifers and calves, sheep and swine and the offspring of such animals.

13. The security may, in the province in which the live stock are, and in which statutes or ordinances are in force relating to bills of sale and chattel mortgages, or either of them, be taken in the form of a bill of sale or chattel mortgage, as the case may be, valid and lawful according to the laws in force in the province. (6-7 Geo. V., c. 10).

14. Such bill of sale or chattel mortgage shall, in accordance with the said statutes or ordinances, be filed or registered, as the case may be, together with or accompanied by the proper affidavit or affidavits called for in that behalf by the said statutes or ordinances. (6-7 Geo. V., c. 10).

15. Such bill of sale or chattel mortgage, and the taking of such security, and the respective rights and privileges of the bank on the one hand, and the grantor or mortgagor on the other shall be subject to the provisions of the said statutes or ordinances, and to all other laws affecting bills of sale or chattel mortgages and the terms and conditions thereof in force in the province in which the live stock mentioned in the bill of sale or chattel mortgage are. (6-7 Geo. V., c. 10).

16. In any province in which there are no statutes or ordinances in force relating to bills of sale or chattel mortgages, and to their filing or registration, then in such case the security may, as regards live stock which are in that province be taken in the form "H" in the Schedule to this Act or in a form to the like effect. (6-7 Geo. V., c. 10).

17. A memorandum of the security taken in the form "H" shall be published in the *Official Gazette* of the province referred to in sub-section sixteen next preceding, within thirty days after the execution thereof, and if such memorandum is not so published the security so taken shall, as against creditors of the grantor and as against subsequent purchasers in good faith for valuable consideration, be null and void. (6-7 Geo. V., c. 10).

18. Such memorandum shall be in the form "I" in the Schedule to this Act, or to the like effect. (6-7 Geo. V., c. 10).

19. The bank shall by virtue of the security taken under sub-section sixteen of this section have full power, right and authority, if the bills or notes therein mentioned or described or any of them are not paid according to their tenor, to enter upon the premises upon which the live stock mentioned in the security are, to take possession of or seize such live stock, and before or after such taking possession of or seizure, to sell such live stock, or such part thereof as may be necessary to realize the amount due and payable, at public auction, not less than five days after,

(a) Notice of the time and place of such sale has appeared in

a newspaper published in or nearest to the place where the sale is to be made, and

(b) posting a notice in writing or in print of the time and place of such sale in or at the post office nearest to the place where the sale is to be made. (67- Geo. V., c. 10).

20. After all necessary and reasonable expenses in connection with such seizure and sale have been deducted and prior privileges, liens or pledges existing in favour of third parties, and for which claims may have been filed with the party making the sale have been satisfied, the balance of the proceeds of the sale shall be applied in payment of the said bills or notes and the surplus, if any, returned to the grantor. (6-7 Geo. V., c. 10).

The section must be read subject to sec. 90.

It is to be noted that the provision of sub-sec. 2 applies only to security taken under sub-sec. 1, and not to security taken under sub-sec. 3. There is no similar provision applicable to goods covered by a warehouse receipt.

The bank's right to hold substituted goods under this section must be distinguished from the right under sec. 89 to retain its security on goods manufactured from the goods originally assigned to it. The latter right extends both to goods covered by a warehouse receipt and to goods assigned under sec. 88.

The word "manufacturer" as defined by sec. 2 (i) "includes manufacturer of logs, timber, or lumber, maltsters, distillers, brewers, refiners and producers of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetables, and any person who produces by hand, art, process or mechanical means any goods, wares or merchandise."

The goods of a manufacturer, upon the security of which the bank may, under this section, make advances, must be goods actually manufactured by him or procured for such manufacture. They must not be goods procured by him to be sold in substantially the same condition.

(1) *Merchants' Bank of Halifax vs. Houston*, 7 B. C. L. R. 465 (1899).

Where the bookkeeper of a mill owner, to enable the owner to carry out a contract, bought logs with advance made for this purpose by a bank, which logs were cut up at such owner's mill, and the bookkeeper endorsed the owner's notes to the bank.

Held, that the logs and lumber manufactured therefrom did come under a chattel mortgage covering all lumber which might at any time be brought on the premises, and that the bank was not prevented by the Bank Act from taking the usual security in respect to the logs.

On appeal to the Supreme Court of Canada, that Court on the 21st May, 1901, confirmed this judgment.

(2) *Molsons Bank vs. Beaudry*, R. J. Q., 11 K. B., 212 (1901).

B., a wholesale and retail lumber merchant, as security for certain promissory notes, hypothecated to the bank certain lumber, and subsequently became insolvent. The bank was collocated by preference on the proceeds of the sale of this lumber by the curator. The creditors contested the collocation on the ground that the insolvent was not carrying on any of the business operations mentioned in

section 88 of the Bank Act, and that the hypothecation did not fall under the meaning and provisions of that section. The Superior Court for the District of Montreal on the 25th January, 1901, held that lumber is not the product of the forest but of the saw mill, the product of the forest being the logs in their original condition, and the Court decided that the bank was not justified under the terms of the Bank Act to make the advance, and, consequently, the alleged hypothecation was a nullity.

This judgment, on appeal to the Court of King's Bench, Appeal Side, was confirmed unanimously, but Mr. Justice Hall differed as to one of the reasons given, namely, that the lumber in question was not the product of the forest. His Lordship was of opinion that the lumber in question came within the terms of section 88 of the Bank Act, and was the product of the forest within the meaning of that section.

(1) A bank cannot under Section 88 (3) of the Bank Act obtain a lien upon the products of a forest for a pre-existing debt.

(2) Manufactured wood, that is to say, wood transformed into joists, planks, plinth and mouldings does not constitute a forest product within the terms of Section 88 (3).

(3) *Houston vs. Merchants Bank of Halifax*, 31 S. C. R., 361. (1901).

H. held a chattel mortgage on a saw mill belonging to G., with the machinery and lumber therein, and all lumber that might at any time thereafter be brought on the premises. The mortgage not being registered gave H. no priority over subsequent incumbrances. Two months later G. gave H. a second mortgage on said property to secure a note for \$794. Shortly after this a contractor applied to G. for a large quantity of lumber for building purposes, G., being unable to purchase the logs asked the Merchants' Bank for an advance. The bank, knowing G. to be financially embarrassed, refused the advances to him, but agreed to make them if some reliable person would purchase the logs, which was done by G.'s bookkeeper and in consideration of an advance of \$3,500, G. assigned the contractor's order to the bookkeeper and agreed to cut the logs at a price fixed, and deliver them to the bookkeeper at the mill site. The latter then assigned to the bank all moneys to accrue in respect to the contract, which assignment was agreed to by the contractor, and a day or two after also assigned to the bank three booms of logs by numbers, in addition to one assigned previously. This purported to be done under sec. 88 (3) of the Bank Act. Two or three days later G. made an assignment for benefit of his creditors, previous to which, however, the logs had arrived at the mill and were mixed with other logs of G. The greater part had been converted into lumber when H. seized them under his chattel mortgage.

Held, affirming the judgment of the Supreme Court of British Columbia (7 B. C. Rep. 465), that no property in the logs assigned to the bank had passed to G., and H. having no higher right than his mortgagor, could not claim them under his mortgage.

Shortly before G.'s assignment for the benefit of his creditors his bookkeeper transferred to the bank a chattel mortgage given him by G. to secure payment of \$800. The judgment appealed from ordered the assignee in bankruptcy to pay the bank the balance due on said mortgage.

Held, reversing said judgment, that the assignee had been guilty of no acts of conversion and was not liable to repay this money.

The mortgage was not given to secure advances and did not give the bank a first lien on the property. The bank was in the same position as if it had received the mortgage directly from G. when he was notoriously insolvent.

(4) *Hirschfeldt vs. The Union Bank*, R. J. Q., 7 S. C. 300 (1895).

Held, the pledgee of grain pledged as collateral security for advances is not responsible for commissions on sales made by an agent employed by the pledger and acting solely under his instructions as owner although such sales were made only on such terms as were satisfactory to the pledgee.

(5) *La Banque d'Hochelaga vs. Merchants' Bank*, 10 Man. L. R. 381 (1895)

One A., a wholesale purchaser and shipper of dead stock and the products thereof, obtained several advances of money from the defendants on the security of assignments of certain hog products in the form in Schedule C. to the Bank Act; and agreed with the manager of the Bank to ticket the goods so as to identify them, and not to sell the goods. He then set apart certain of the goods as belonging to the defendants, and placed tickets over them to indicate this, but afterwards he sold all these goods in the ordinary course of business and substituted other goods of a like character in their place, placing the same tickets upon them. Subsequently, the plaintiffs, as security for a then pre-existing debt due them from A., obtained an assignment of the same kind as the defendants had taken, covering *inter alia* 10,000 lbs. of bacon, but no appropriation of any particular bacon as hypothecated to the plaintiffs was made until about seven weeks later, when, at the instance of an officer of the plaintiffs, A. set apart 10,000 lbs. of bacon out of the pile which had been appropriated to the defendants in the manner above described and this quantity was ticketed with the name of the plaintiff bank, the defendants' tickets being removed. Shortly afterwards A. absconded and the defendants took possession of this 10,000 lbs. of bacon under their securities.

Held, that they were entitled to hold it against the plaintiffs.

Held, also, that, notwithstanding the language of s. 90 of the Bank Act, a bank may take securities of the kind provided for by s. 88, even for pre-existing debts, as the general provisions of s. 80 should not be held to be restricted by the language of s. 90 so as to prevent it.

(6) *Re Victor Varnish Co. Clare's Claim*, 1908, 16 O. L. R. 338.

Security under sec. 88 is not assignable by the bank so as to transfer the special lien or security to a third party.

The security for loans authorized by this section may be taken in any form allowed by the law of the place where the transaction occurs and where the goods or products are, but, if the security is not taken in the form of Schedule C., the local law must be observed.

Sub-sec. 5 however, permits the security to be taken in a special form and sub-sec. 6 declares the rights acquired by the bank under such form. If this form is used it is valid notwithstanding that it does not comply with provincial law.

(7) *Mutchenbacher vs. Dominion Bank*, 21 Man. R. 320, 18 W. L. R. 18 (Man.)

Advances to vendee of timber. Security.

(8) *Quebec Bank vs. Craig*, C. D. L. R. 573, 22 O. W. R. 874.

A bank which advanced money to a paper manufacturing com-

pany upon the security of certain sulphite which the company used in the manufacture of paper, does not lose its security by such sulphite being replaced by other sulphite in accordance with the intention of all parties.

(9) *Townsend vs. Northern Crown Bank.*

The words "and the products thereof" in sub-sec. 1 of sec. 88 of the Bank Act, 1906, R. S. C. ch. 29, apply to all the articles previously mentioned in the sub-section, and not to live stock and dead stock only. (Dictum of Hall J. in *Molsons Bank vs. Beandry*, O. R. 11 K. B. 212, approved).

(10) *Townsend vs. Northern Crown Bank*, 4 D. L. R. 91, 22 O. W. R. 961, 26 O. L. R. 291.

Where lumber covered by security given to a bank under secs. 88 and 90 of the Bank Act, R. S. C. 1906, ch. 29, is used in the erection of buildings, and the building contracts are assigned to the bank, the bank is entitled to such of the money payable under the contracts as represents the lumber so used.

(11) *Imperial Paper Mills vs. Quebec Bank*, 6 D. L. R. 475, 26 O. L. R. 637.

A security under this section, upon some part of a larger number of similar articles is not invalid under sec. 90, because the antecedent promise or agreement in writing, in pursuance of which it is given, does not state the precise amount of the debt to be secured or identify the precise articles to be charged.

(12) *Bank of British North America vs. Wood* (1910), 14 W. L. R. 124.

T., a trader, being indebted to the plaintiffs, a chartered bank, in August, 1907, executed to them as security an assignment of his bills receivable and book debts. It was arranged between the plaintiff and T. that he should continue to carry on business and collect all moneys and deposit them with the plaintiffs in a current account, against which he was permitted to draw cheques and make payments to his various creditors as he saw fit; the plaintiffs, however, to be furnished with a monthly statement showing the details of his accounts receivable; and these were furnished by T., from time to time. The plaintiffs did not notify any of the T.'s debtors, neither did they do anything towards perfecting the assignment other than to receive the monthly statements. At the time of this assignment T. owed the defendants, wholesale dealers, a large sum for goods bought, and, continuing to do business after the assignment, he increased his credit account with the defendants, who were not aware of the assignment. T.'s business did not improve, and in November, 1908, the plaintiffs took a further assignment from T., identical in terms with the first. About that time the defendants pressed T. for payment, and T. agreed to pay them, as they were his largest creditors, all the moneys collected by him from his customers. Pursuant to this arrangement, certain moneys and promissory notes were received by the defendants, which the plaintiffs claimed under their assignment. The defendants said that T. told them, after the existence of the assignment had been made known to the defendants, that the plaintiffs knew that he was making payments to them, and that they were receiving payments out of the accounts. The plaintiffs said that they did not hear about the defendants getting the moneys collected until January, 1909. In February, 1909, T. made a general assignment for the benefit of his creditors. The

defendants contended that the plaintiffs, in the circumstances, after allowing T. to continue to trade and purchase additional quantities of goods, and to make the representations usually made by a trader to the wholesaler, and especially the representation that the plaintiffs were permitting him to dispose of his moneys as he saw fit, and knew of the arrangement with the defendants and did not object, ought not to be heard to say that T. had not authority to make the payments or the representations:—

Held, as to the moneys collected, that the plaintiffs were not estopped, they had the right to take the assignment; and no duty was thrown upon them to notify the general creditors of the fact, so as to create an estoppel. The defendants also received, before notice, certain promissory notes from T., and, after notice of the plaintiffs' assignment, they collected upon these notes certain sums:

Held, that the defendants must be considered as equitable assignees of these sums, and the notes and moneys having been reduced into possession before notice of the plaintiff's claim, the plaintiffs could not recover as to those items.

SCHEDULE C.

In consideration of an advance of _____ dollars, made by the _____ Bank to A. B., for which the said bank holds the following bills or notes (*describe the bills or notes, if any*), (or, in consideration of the discounting of the following bills or notes by the

Bank for A. B.; (*describe the bills or notes*), the goods, wares and merchandise mentioned below are hereby assigned to the said bank as security for the payment, on or before the _____ day of _____ of the said advance, together with interest thereon at the rate of _____ per cent. per annum from the _____ day of _____ (*or, of the said bills and notes, or renewals thereof, or substitutions therefor, and interest thereon, or as the case may be*).

This security is given under the provisions of section eighty-eight of *The Bank Act*, and is subject to the provisions of the said Act.

The said goods, wares and merchandise are now owned by _____ are now in the possession of _____ and are free from mortgage, lien or charge thereon (*or as the case may be*), and are in _____ (*place or places where goods are*), and are the following: (*description of goods assigned*).

N. B.—*The bills or notes and the goods, etc., may be set out in schedules annexed.* 63-64 V., c. 26, s. 46, and Sch. C.

The name of the owner of the goods and also the name of the person in whose possession they are and any mortgage lien or charge on such goods, should be mentioned.

The form also provides for the mentioning of the "place or places where the goods are" and the "description of the goods assigned." The latter is an important essential of the form and usually involves the former. In the absence of decisions under the Bank Act it would be well to comply with the rule laid down in the Ontario Bills of Sales Act, namely, that all instruments under the Act shall contain such sufficient and full description thereof that the same may be thereby readily and easily known and distinguished. Cf. *Hatfield v. Imperial Bank*, 1907, 6 Terr. L. R., 296, and cases collected in *Falconbridge*, pp. 188, *et seq.*

Chester Furniture Co., Ltd. vs. Krug, 18 D. L. R. 486, 7 O. W. N. 144.

There is vested in a bank no implied right to assign the securities which it is specially privileged to take under s. 88.

Townsend vs. Northern Crown Bank, 20 D. L. R. 77, 49 Can. S. C. R. 394.

Sawn lumber is a "forest product" on which a bank may take a statutory receipt under s. 88 from a customer who is a "wholesale purchaser" of lumber, as security for a loan made to him. (*Townsend vs. Northern Crown Bank*, 13 D. L. R. 300, 28 O. L. R. 521, affirmed; *Molsons Bank vs. Beaudry*, Que. 11 K. B. 212, dissented from).

Imperial Paper Mills Ltd., vs. Quebec Bank, 13 D. L. R. 702.

A bank may take security for advances from a wholesale manufacturer under sub-secs. 1, 3, 5 and 6 of section 88, provided the goods involved are capable of ascertainment and identification; the statutory form in the schedule to the Act, is not compulsory as to its directions for description of goods and their locality, but is intended as a guide. (*Imperial Paper Mills Ltd. vs. Quebec Bank*, 6 D. L. R. 475, 26 O. L. R. 637, affirmed; *Tailby vs. Official Receiver*, 13 A. C. 523, at 533, applied).

Edborg vs. Royal Bank, 16 D. L. R. 385, 6 W. W. R. 180.

As against a bank taking possession under a statutory security given to it by a wholesaler or other person under s. 88, the employees of the company may enforce their prior lien to the extent of three months' wages either by resort to the assets or by a claim in debt against the bank which has disposed of the same, the intent of s. 88 being that the bank obtaining the benefits of the security must also assume its burdens. (*Richardson vs. Willis*, 42 L. J. Ex. 68, applied; *Pomerleau vs. Thompson*, 16 D. L. R. 142 referred to.)

Townsend vs. Northern Crown Bank, 20 D. L. R. 77, 49 Can. S. C. R. 394.

One who purchases lumber in carload lots, both for use in his business as a building contractor and for re-sale in small lots, is a "wholesale purchaser" of "forest products" from whom a bank may take a statutory receipt pledging his stock as security for a present advance by virtue of s. 88 (*Townsend vs. Northern Crown Bank*, [No. 2], 13 D. L. R. 300, 28 O. L. R. 521, affirmed).

Townsend vs. Northern Crown Bank (No. 4), 13 D. L. R. 300, 28 O. L. R. 521.

One who purchases lumber in carload lots for use in his business and for sale to others is a "wholesale purchaser" of forest products to whom a bank may, under sec. 88, loan money on a statutory receipt giving such products as security.

Townsend vs. Northern Crown Bank (No. 4), 13 D. L. R. 28 O. L. R. 521.

Sawn lumber is a "product of the forest" on which a bank may take a statutory receipt under sec. 88 from a customer who is a wholesale purchaser of sawn lumber as security for a loan made to him. (*Townsend vs. Northern Crown Bank*, 10 D. L. R. 149, affirmed).

Townsend vs. Northern Crown Bank (No. 2), 10 D. L. R. 149, 27 O. L. R. 479.

The words "and the products thereof," in sub-sec. 1 of sec. 88 apply to all the articles previously mentioned in the sub-section, and not to live stock and dead stock only. (*Townsend vs. Northern Crown Bank*, 4 D. L. R. 91, affirmed); *Molsons Bank vs. Beaudry*, Q. R. 11 K. B. 212, dissented from). Affirmed, 13 D. L. R. 300.

Townsend vs. Northern Crown Bank (No. 2), 10 D. L. R. 149.

One who carries on business partly as a wholesale dealer in lumber and partly as a builder, is a wholesale dealer in lumber within the meaning of sub-sec. 1 of section 88. Affirmed, 13 D. L. R. 300.

89. Goods Manufactured from Articles Pledged.—If goods, wares and merchandise are manufactured or produced from the goods, wares and merchandise, or any of them, included in or covered by any warehouse receipt, or included in or covered by any security given under the last preceding section, while so covered, the bank holding such warehouse receipt or security shall hold or continue to hold such goods, wares and merchandise, during the process and after the completion of such manufacture or production, with the same right and title, and for the same purposes and upon the same conditions, as it held or could have held the original goods, wares and merchandise.

2. Prior Claim of Bank Over Unpaid Vendor—Proviso.—

All advances made on the security of any bill of lading or warehouse receipt, or of any security given under the last preceding section, shall give to the bank making the advances a claim for the repayment of the advances on the products or stock, goods, wares and merchandise therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor: Provided that such preference shall not be given over the claim of any unpaid vendor who had a lien upon the products or stock, goods, wares and merchandise at the time of the acquisition by the bank of such warehouse receipt, bill of lading, or security, unless the same was acquired without knowledge on the part of the bank of such lien.

3. Sale of Goods on Non-Payment of Debt—Proviso.—In

the event of the non-payment at maturity of any debt or liability secured by a warehouse receipt or bill of lading, or secured by any security given under the last preceding section, the bank may sell the products or stock, goods, wares and merchandise or grain mentioned therein, or so much thereof as will suffice to pay such debt or liability with interest and expenses, returning the surplus, if any, to the person from whom the warehouse receipt, bill of lading, or security, or the products or stock, goods, wares and merchandise or grain mentioned therein, as the case may be, were acquired: Provided that such power of sale shall be exercised subject to the following provisions, namely:—

(a) Notice of Sale of Saw-Logs, Railway Ties and Lumber.

—No sale, without the consent in writing of the owner of any products of the forest shall be made under this Act until notice of the time and place of such sale has been given by a registered letter, mailed in the post office, post paid to the last known address of the pledgor thereof, at least thirty days prior to the sale thereof;

(b) **Notice of Sale of Goods.**—No such products or stock other than products of the forest and no goods, wares and merchandise, and no grain shall be sold by the bank under this Act without the consent of the owner, until notice of the time and place of sale has been given by a registered letter, mailed in the post office, post paid, to the last known address of the pledgor thereof, at least ten days prior to the sale thereof;

(c) **Sale by Auction.**—Every sale, under such power of sale, without the consent of the owner, shall be made by public auction, after notice thereof by advertisement, in at least two newspapers published in or nearest to the place where the sale is to be made, stating the time and place thereof; and, if the sale is in the province of Quebec, then at least one of such newspapers shall be a newspaper published in the English language, and one other such newspaper shall be a newspaper published in the French language. 53 V., c. 31, ss. 76, 77 and 78; 63-64 V., c. 26, s. 19. Am.

(1) *Re Goodfellow, Traders Bank vs. Goodfellow*, 1890, 19 O. R. 299.

A miller gave a warehouse receipt to a bank on some wheat "and its product" stored in his mill for advances made to him, and died insolvent about two months after. During this period wheat was constantly going out of and fresh wheat coming into the mill. Just before his death the bank took possession, and found a large shortage in the wheat which had commenced shortly after the receipt had been given, and had continued to a greater or less degree all the time.

In the administration of his estate it appeared that, during the period of shortage, some of the wheat had been converted into flour, which had been sold, and the proceeds, which were less than the value of the shortage, paid to the administrator:

Held, that the bank was entitled to the purchase money of the flour.

All the wheat made into flour after the shortage began and sold to customers was wheat belonging to the bank. As long as the "product" of this wheat can be traced, whether it be in flour or in money, it is recoverable by the bank as against the deceased and his administrators.

(2) *Union Bank vs. Spinney*, 1906, 38 S. C. R. 187, reversing 1 East L. R. 277.

In this case, corn which was pledged to a bank was ground into meal and the product was sold, and the proceeds were sought to be fraudulently diverted to one of the pledgor's creditors. It was held, however, that the purchaser knew or ought to have known that the meal was the property of the bank, and that he was liable to the bank for the purchase money in his hands.

(3) *Toronto General Trusts Corporation vs. Central Ontario R. W. Co.*, 10 O. L. R. 347, C. A.

As collateral security to a promissory note, the makers deposited with the banks 300 railway bonds, and, by a memorandum of hypothecation authorized the bank, upon default, "from time to time to sell the said securities . . . by giving fifteen days' notice in one daily paper published in the city of Ottawa . . . with power to the bank to buy in and resell without being liable for any loss

occasional thereby:"—*Held* (Osler, J. A., dissenting), that the power was to sell by auction, and that the bank had no power to sell by private contract. *Semble*, that, even if there was power to sell by private contract, the sale made to the respondents could not, upon the evidence as to the methods adopted, be supported; they having notice that the bank held the bonds as pledgees.

Townsend v. Northern Crown Bank, 4 D. L. R. 91, 22 O. W. R. 901.

Articles manufactured from lumber covered by security under secs. 88 and 90 of the Bank Act, R. S. C. 1906, ch. 29, are likewise covered by the security.

Graves vs. Home Bank (1910), 14 W. L. R. 291.

The plaintiff obtained from the defendants, a banking corporation at their Winnipeg office, an advance upon a draft drawn upon a Toronto broker, to which draft were attached six bills of lading for 20,000 bushels of oats shipped to the broker. This was accompanied by a memorandum of hypothecation, signed by the plaintiff, which provided that the securities, hypothecated, renewals, substitutions and the proceeds thereof, were to be held by the defendants as a general and continuing collateral security for the payment of the present and future indebtedness and liability of the plaintiff, and any ultimate unpaid balance thereof, and that the same might be realised by the defendants in such manner as might seem to them advisable, and without notice to the plaintiff in the event of default. The draft on the Toronto broker not having been paid, and the price of oats having dropped, the defendants, without giving any written notice or otherwise complying with s. 89 of the Bank Act, sold the oats for 36½ cents a bushel. Shortly afterwards the price rose. At the end of the month in which the sale was made, the plaintiff signed the usual customer's receipt, whereby he released the bank from all claims in connection with the charges and credits in the accounts and dealings up to the end of the month. *Held*, that the release was valid and given for a good consideration, and was sufficient to bar the plaintiff's action for an account in respect of the oats.

Graves v. Home Bank of Canada, 20 Man. R. 149, 14 W. L. R. 291.

The plaintiff's claim was for damages for an alleged illegal sale at a loss of certain goods hypothecated by him for advances. Later, but before action, he signed, either personally or by his authorized agent, nine or ten successive monthly acknowledgments of the correctness of the balances due to him as shewn by the books of the bank. These acknowledgments read, "And in consideration of the account of the undersigned being not now closed, and subject to the correction of clerical errors, if any, the bank is hereby released from all claims by the undersigned in connection with the charges or credits in the said accounts and dealings up to said day." *Held*, that, in the absence of any suggestion of fraud on the part of the bank in procuring such releases, they were sufficient in form to bar the plaintiff's action, and, being founded on a sufficient consideration, were valid and binding upon him.

Townsend vs. Northern Crown Bank (No. 2), 10 D. L. R. 149, 4 O. W. N. 514.

Articles manufactured from lumber covered by security under sections 88 and 90 of the Act are likewise covered by the security.

Townsend vs. Northern Crown Bank (No. 4), 13 D. L. R. 300, affirming (No. 2), 10 D. L. R. 149.

90. Conditions under which Bank may take Security.—

The bank shall not acquire or hold any warehouse receipt or bill of lading, or any such security as aforesaid, to secure the payment of any bill, note, debt, or liability, unless such bill, note, debt or liability is negotiated or contracted,—

(a) at the time of the acquisition thereof by the bank; or

(b) upon the written promise or agreement that such warehouse receipt or bill of lading or security would be given to the bank:

Proviso.—Provided that such bill, note, debt, or liability may be renewed, or the time for the payment thereof extended, without affecting any such security.

2. Exchanging of Warehouse Receipt for Bill of Lading and Vice Versa.—The bank may—

(a) on the shipment of any products or stock, goods, wares and merchandise, or grain for which it holds a bill of lading, or any such security as aforesaid, surrender such receipt or security and receive a bill of lading in exchange therefor; or,

(b) on the receipt of any products or stock, goods, wares and merchandise, or grain for which it holds a bill of lading, or any such security as aforesaid, surrender such bill of lading or security, store the products or stock, goods, wares and merchandise, or grain, and take a warehouse receipt therefor, or ship the products or stock, goods, wares and merchandise, or grain, or part of them, and take another bill of lading therefor. 53 V., c. 31, s. 75; 63-64 V., c. 26, s. 18.

Mortgages whether of real or personal property may be taken by a bank only by way of additional security (see sec. 68). Security under secs. 86 and 88 cannot be taken for a past advance, except upon a written promise or agreement contemporaneous with the advance.

As to penalties, see secs. 143 and 144.

If the bill, note, debt or liability is not negotiated or contracted at the time of the acquisition of the security by the bank, then the negotiation or contracting must be upon the written promise or agreement that such security shall be given. The writing must be given to the bank either at the time of the negotiation or contracting of the debt or anterior thereto, for a bill, etc., could not be said to be negotiated or contracted upon a written promise which is not then in existence.

(1) *Suter vs. Merchants' Bank*, 24 Grant's Ch. R. 365 (1876).

The judgment in this case turned upon advances made to a manufacturer in goods manufactured remaining unsold without specifying any quantity.

(2) *Robertson vs. Lajoie*, 22 L. C. J. 169 (1878).

A document in the form following was a warehouse receipt, and not a mere delivery order: "Received from on storage, in.... the following merchandise, viz.: (399) three hundred tons No. 1 Clyde pig iron, storage free till opening of navigation."

Such warehouse receipt is transferable by indorsement as collateral security for a debt contracted at the time, in good faith, the pledgee having no notice that the pledgor is not authorized to pledge, the proof of such knowledge being on the party signing the receipt.

An obligation contracted at the time may be made to cover future advances, but not past indebtedness.

See *Watson vs. Jamieson*, 33 L. C. J. 71 (1889).

(3) *Perkins vs. Ross*, 6 Q. L. R. 65 (1880).

A quantity of timber was pledged for the payment of a draft, and if the draft was not paid, the holder was to sell the wood and place the proceeds to the owner's credit. The draft was not paid, the owner of the wood became insolvent, and the pledgee sold the wood, of which he never had had actual delivery. *Held*; that the pledgee could not place the balance of the price of sale after paying the draft to the credit of a former indebtedness of the owner.

(4) *Ross vs. Molson's Bank*, 2 Dorion's Q. B. R. 82 (1881).

Banks cannot acquire a lien on logs under the Banking Act, 34 Vict., chap. 5, if the pledge of these logs was made for a previous indebtedness, or if they were not held by virtue of a transfer of a receipt by a cove-keeper or by the keeper of any wharf or harbour, or other place, or of a specification of timber deposited in a cove, wharf or harbour, warehouse, mill or other place in Canada within the meaning of the said Act.

To acquire a lien under Articles 1745, 1966 and 1967 of the Civil Code of Lower Canada, there must be an actual delivery or possession of the property pledged or of some document in use in the ordinary course of business entitling the bearer thereof to claim possession of such property.

(5) *Bank of Hamilton vs. Shepherd et al., and Bailey et al. vs. Bank of Hamilton*, 21 O. A. R. 156 (1894).

The renewal of a note is not a negotiation of it within the meaning of section 90 of the Bank Act, so as to support a security taken at the time of the renewal in substitution for a previously existing security.

(6) *Bank of Hamilton vs. Halsted*, 28 S. C. R. 235 (1897).

A bill or note taken by a bank on acquiring a security in form C. to the Bank Act, sections 88 and 90 is not "negotiated," at the time of the acquisition thereof within the meaning of the latter section, when the person giving the security, and to whose account the proceeds of the bill or note are credited, is not at liberty to draw against them except on fulfilling certain other conditions.

Held by the Supreme Court of Canada, an assignment made in the form C. to the Bank Act, as security for a bill or note given in renewal of a past due bill or note, is not valid as a security under sec. 88.

The judgment of the Court of Appeal for Ontario, which affirmed the judgment of Meredith, C. J., affirmed.

Cf. *Dominion Bank v. Oliver*, 1889, 17 O. R. 402; *Ontario Bank v. O'Reilly*, 1906, 12 O. L. R. 420; *Toronto Cream v. Crown Bank*, 1908, 16 O. L. 400.

(7) *Conn vs. Smith et al.*, 28 O. R. 629 (1898).

The insolvent had been in the habit of buying hops from time to time, and giving the bank his own warehouse receipts or direct

pledges for the purpose of raising money to pay for them. Then, at the request of the bank, he constituted his bookkeeper, his warehouseman, and the latter issued warehouse receipts to the bank in substitution for the securities or receipts theretofore held, there being no further advance made when the new securities were given.

Held, that this exchange of securities should be treated as authorized under sub-section 2 of section 90 of the Bank Act.

The plaintiff asked for a declaration that advances made by the bank upon a mortgage by the insolvent to a third person, and by him assigned to the bank were contrary to the Bank Act, and that the property was free from the mortgage.

Held, that no such declaration could be made in the absence of the mortgagee, who was liable to the bank as endorser of a promissory note of the insolvent, collateral to the mortgage.

Held also, one who carries on business partly as a wholesale dealer in lumber and partly as a builder, is a wholesale dealer in lumber within the meaning of this sub-section.

(8) *Standard Bank vs. Thomas Ltd.* (1910), 1 L. 5 O. W. R. 188, 1 O. W. N. 379. *Affirmed* 1 O. W. N. 548.

A company sold a branch of their business taking a chattel mortgage for \$5,066.74 as security. By mistake the affidavit of *bona fides* stated that the mortgagor was justly indebted to the company in the sum of \$5,000. *Held*, that the mortgage was a valid security for \$5,000. *Mader vs. McKinnon* (1892), 21 S. C. R. at p. 652, followed *Midland Loan vs. Cowieson*, 1981, 20. In order that the mortgagor might obtain an advance from a bank, the president of the company signed a guarantee in this form, "A. E. Thomas, Ltd.," and under that name "A. E. Thomas, Pres." *Held*, that the guarantee was binding on the company. The mortgage covered the stock in trade, fixtures and all book debts. The Company did not notify the debtors of the assignment of the debts as required by the Judicature Act, s. 58 (5). The mortgagor later assigned the book debts to the bank as collateral security for the advance. *Held*, that the bank had taken their assignment without notice of the company's claim and having collected the debts were entitled to retain the proceeds. The mortgagor also gave the bank a document purporting to be a further security, under s. 88 of the Bank Act, covering 230 cases of matches, and the bank took possession of the matches.

Held, that as the matches were covered by the chattel mortgage it was not necessary to consider whether the document claimed by the bank was of any value in view of s. 90 of that Act. Judgment given bank against the company for the amount of the guarantee. Judgment given the company against the bank for conversion of the matches, the bank to have right to restrain the matches on payment to the company the amount of their mortgage. Reference to the Master in Ordinary to take accounts. Costs and further direction to be dealt with after the Master's report.

(9) *Norton vs. Canadian Bank of Commerce*, 1 Sask. L. R. 448, 8 W. L. R. 910, 9 W. L. R. 331.

One Broley made a general assignment of all moneys due him to the defendant as security for an advance, and subsequently made a specific assignment of all moneys due to him by a school district. Later, being still indebted to the bank in large sums, he conveyed to the bank a house and lot. A further specific assignment of a debt due by the town of North Brantford to Broley was given at a later date, and within 60 days of this last assignment Broley made an

assignment for the benefit of his creditors. Advances were made on the security of all assignments to the bank except that last mentioned. In an action by the assignee to set aside the various assignments and conveyances as being in fraud of creditors.

Held, that the various assignments were valid under the Bank Act, and, even if the advances upon such security were not authorized, Broley could not, having received good consideration, assail the pledge; and his creditors occupied no better position.

2. That, as to all the assignments save the last, the bank acted in perfect good faith and belief in Broley's solvency, and without any intent to defeat, delay, or prejudice any creditor or prefer the bank's claim; and the assignments were therefore valid.

3. That, as no advance had been made on the security of the last assignment, which was made within 60 days before the assignment for the benefit of creditors, the assignment was void under the provisions of the Assignment's Act. *Blakely vs. Gould*, 24 A. R. 153, distinguished.

(10) *Indian and General Investment Trust Ltd. vs. Union Bank*, 42 N. S. R. 353.

The trust of the plaintiff company, to secure debentures of the A. P. Co., contained a clause charging in favour of the trustees "its other assets whatsoever and wheresoever with the payment" of all moneys for the time being owing on the security of these presents, and providing that "such charge shall rant as a floating charge, and shall in no way hinder the company from selling or otherwise disposing of such assets in the ordinary course of its business, and for the purpose of carrying out the same."

The deed contained the following restriction: "But the company shall not be entitled to mortgage or charge the same in priority to or *pari passu* with the security hereby constituted." It becoming necessary for the company to obtain an advance to pay for pulp wood and to carry on their business, the defendant bank were applied to for a loan, and granted the same upon security being given, under the terms of the Bank Act, s. 74, upon the company's wood at different places.

Held, by Townshend, C. J., and Longley, J., Meagher, J., concurring in the conclusion, that in determining the question whether or not the restrictive clause in the trust deed was brought to the attention of the bank before the money was advanced, the positive evidence of an officer of the company giving details of what occurred must be preferred to the evidence of the bank manager, who testified that he had no recollection of the subject.

Held, also, that, so long as the money remained under the control of the bank, it was open to the bank to cancel the loan and retain the money, upon discovering that the credit was given under a misapprehension as to the nature of the security.

Held, also, that the fact that the bank, in making the loan, relied upon the assignment under the Bank Act, could not prejudicially affect the plaintiffs, when it was shewn that the advance was made after notice of the restriction contained in the trust deed.

Held, also, security under sec. 90, which though given less than 60 days before an assignment by the giver thereof for the benefit of his creditors, is but a continuation of a former security of the like character held by the bank for the indebtedness more than 60 days before the assignment, is not given within 60 days of the assignment; so as to throw upon the bank the onus of supporting it.

(11) *Imperial Paper Mills vs. Quebec Bank*, 6 D. L. R. 475, 26 O. L. R. 637.

Commercial documents, such as securities under the Bank Act, should not be scrutinized with the same particularity as those of the class usually prepared and examined by solicitors and executed only after having been carefully scrutinized as to form.

Section 90 should be construed liberally and not strictly or critically.

(12) *Imperial Paper Mills vs. Quebec Bank*, 19 O. W. R. 308, 2 O. W. N. 1500.

Security taken on timber. Validity of security under sec. 90. Company in liquidation. Crown dues.

Imperial Paper Mills Ltd., vs. Que. Bank, 13 D. L. R. 702, confirming 6 D. L. R. 475.

Statutory security; construction of Act.

Townsend vs. Northern Crown Bank (No. 2), 10 D. L. R. 149, 27 O. L. R., 479, affirmed, 13 D. L. R. 300.

Security under sec. 90 which, though given less than 60 days before an assignment by the giver thereof for the benefit of his creditors, is but a continuation of a former security of the like character held by the bank for the indebtedness more than 60 days before the assignment, is not given within 60 days of the assignment so as to throw upon the bank the onus of supporting it.

Townsend vs. Northern Crown Bank (No. 4), 13 D. L. R. 300, 28 O. L. R. 521.

An assignment to a bank of the book debts of a wholesale purchaser of lumber when given along with a transfer to the bank by way of statutory lien under sec. 90 of the Bank Act, will be supported to the extent to which such book debts represented materials which had been validly pledged to the bank under the statutory security of a like character for which such assignment and lien under sec. 90 was substituted, and the bank may follow the proceeds of such book debts in the hands of the debtor's assignee for creditors. [Affirming 10 D. L. R. 149.]

Can. Bank of Commerce vs. McLeod, 21 D. L. R. 767, 30 W. L. R. 537.

The making of further advances by a bank to its customer is a consideration which would apply to all the securities held by it at the time of making such advances and place it in the position of a holder in due course of an unmatured note of a third party payable to its customer and by him endorsed to the bank under the terms of a general letter of hypothecation, where the bank had no notice of any defect in its customer's title to the note at the time of making the further advances on the customer's account in respect of which such promissory note was taken as collateral. (*Can. Bank of Commerce vs. Wait*, 1 A. L. R. 68; *Bank of B. N. A. vs. McComb*, 21 Man. L. R. 58, referred to).

Townsend vs. Northern Crown Bank (No. 2), 10 D. L. R. 149, 27 O. L. R. 479.

An assignment to a bank of the book debts of a wholesale purchaser of lumber when given along with a transfer to the bank by way of statutory lien under sec. 90, will be supported to the extent to which such book debts represented materials which had been validly pledged to the bank under the statutory security of a like character for which such assignment and lien under sec. 90 was substituted, and the bank may follow the proceeds of such book debts

in the hands of the debtor's assignee for creditors (*Townsend vs. Northern Crown Bank*, 4 D. L. R. 91, varied).

Townsend vs. Northern Crown Bank (No. 2), 10 D. L. R. 150.

Where lumber covered by security given to a bank under sections 88 and 90 of the Act, is used in the erection of buildings, and the building contracts are assigned to the bank, the bank is entitled to such of the money payable under the contracts as represents the lumber so used. (*Townsend vs. Northern Crown Bank*, 4 D. L. R. 91, affirmed). Affirmed, 13 D. L. R. 300.

91. Interest at 7 per cent. may be Charged.—The bank may stipulate for, take, reserve or exact any rate of interest or discount, not exceeding seven per cent. per annum, and may receive and take in advance any such rate, but no higher rate of interest shall be recoverable by the bank.

2. Return to Minister.—The bank shall make a quarterly return to the Minister, as of the last juridical day of the months of March, June, September and December in each year, giving such particulars as may be prescribed by regulations made by the Treasury Board of the interest and discount rates charged by the bank.

3. Signature to Returns.—Such returns shall be made up and sent in within the first thirty days after the respective juridical days aforesaid, and shall be signed by the same persons as are required to sign the monthly returns made to the Minister under section 112 of this Act. 53 V., c. 31, s. 80. Am.

92. Any Rate may be Allowed.—The bank may allow any rates of interest whatever upon money deposited with it.

2. Liability of Bank on Deposits.—The liability of the bank, under any law, custom or agreement to repay moneys heretofore or hereafter deposited with it and interest, if any, shall continue, notwithstanding any statute of limitations, or any enactment or law relating to prescription. 53 V., c. 31, s. 90; R. S., c. 29, s. 126

La Banque de St. Hyacinthe vs. Surrafin, R. J. Q., 2 S. C. 96 (1892).

Banks can charge, on notes which are presented to them for discount, only interest of seven per cent. per annum.

The prohibition in this matter, being one affecting public order, the person who has paid to a bank interest exceeding the rate fixed by law is entitled to receive from the bank the amount of the excess.

Bank of British North America vs. Bossout, 15 Man. R. 266.

Defendant borrowed large sums of money from the plaintiff bank by way of overdraft and on promissory notes. Having agreed to pay interest, first at 24 per cent., and afterwards at 18 per cent. per annum, defendant from time to time gave the bank cheques on his current account to pay the interest at those rates respectively up to the 31st January, 1902. When such cheques were given the account had already been overdrawn, but it was afterwards changed into a credit balance in defendant's favor by deposits or by collec-

tions made by the bank for defendant's account. *Held*, that such cheques should be deemed to have been payment of the interest, and that defendant could not recover back such interest or any part of it, although it was in excess of the seven per cent. rate which the Bank Act permits a bank to charge. *Held*, also, that under section 91 of the Bank Act, the bank was not entitled to sue for and recover interest accruing after 31st January, 1902, at seven per cent. per annum, but could only recover interest at the legal rate of five per cent. per annum from that date on the principal then due.

(3) The contract is not invalid except in so far as it stipulates for more than 7 per cent.

Bank of Montreal vs. Hartmann, 1905, 12 B. C. R. 375.

If, however, the debtor voluntarily pays the excess of interest over seven per cent. as, *e. g.*, by giving his cheque to the bank for such excess as shown by the bank's monthly statement, he cannot recover back the excess, and is not entitled in an action by the bank to have the amount of the excess so paid applied on account of the principal or of the interest calculated at seven per cent. only.

Canadian Bank of Commerce vs. McDonald, *supra*; *Bank of B. N. A. vs. Bossout*, *supra*; *Quinlan vs. Gordon*, *supra*; *Hutton vs. Federal Bank*, 1883, 9 P. R., at p. 581.

See also *Ritchie vs. Canadian Bank of Commerce*, 1905, 2 West. L. R. 499, 501; *Canadian Bank of Commerce vs. McDonald*, 1906, 3 West. L. R. 90, 101; *Williams vs. Canadian Bank of Commerce*, 1907, 13 B. C. R. 70; *Falconbridge*, p. 204.

A bank may also receive and retain, in addition to the discount, the collection or agency charges authorized by secs. 93 and 94.

93. Percentage Chargeable for Collection.—When any note, bill, or other negotiable security or paper, payable at any of the bank's places or seats of business, branches, agencies or offices of discount and deposit in Canada, is discounted at any other of the bank's places or seats of business, branches, agencies or offices of discount and deposit, the bank may, in order to defray the expenses attending the collection thereof, receive or retain in addition to the discount thereon, a percentage calculated upon the amount of such note, bill, or other negotiable security or paper, not exceeding one-eighth of one per cent.; provided that the bank may make a minimum charge of fifteen cents. 53 V. c. 31, s. 82.

(*Cf.* sec. 91 as to rate of interest allowed by law, and sec. 94 as to collection fees on negotiable paper payable at places other than the place of discount or a branch or agency of the same bank.)

A bank is not entitled to charge any discount or commission for the cashing of any official cheque of the Government of Canada, or of any department thereof, whether drawn on the bank cashing the cheque or on any other bank (sec. 98).

94. Agency Charges.—The bank may, in discounting any note, bill or other negotiable security or paper, *bona fide* payable at any place in Canada, other than that at which it is discounted, and other than one of its own places or seats of business, branches, agencies or offices of discount and deposit in Canada, receive and retain, in addition to the discount thereon, a sum not exceed

ing one-fourth of one per cent. on the amount thereof; provided that the bank may make a minimum charge of twenty-five cents. 53 V., c. 31, s. 83.

95. Deposits may be Received from Persons Unable to Contract.—The bank may, subject to the provisions of this section, without the authority, aid, assistance or intervention of any other person or official being required,—

(a) receive deposits from any person whomsoever, whatever his age, status or condition in life, and whether such person is qualified by law to enter into ordinary contracts or not; and.

(b) from time to time repay any or all of the principal thereof, and pay the whole or any part of the interest thereon to such person, unless before such repayment the money so deposited in the bank is lawfully claimed as the property of some other person.

2. Payments by Consent.—In the case of any such lawful claim the money so deposited may be paid to the depositor with the consent of the claimant, or to the claimant with the consent of the depositor.

3. Deposit Limited to \$500.—If the person making any such deposit could not, under the law of the province where the deposit is made, deposit and withdraw money in and from a bank without this section, the total amount to be received from such person on deposit shall not, at any time, exceed the sum of five hundred dollars. 53 V., c. 31, s. 84. 53 V., c. 31, s. 80. Am.

Jolus vs. Standard Bank, 2 O. W. N. 910.

Deposit in one bank. Marked cheque of another bank. Failure of bank which marked cheque.

Rear vs. Imperial Bank (1909), 7 W. L. R. 408; 13 B. C. R. 345, affirmed; 42 S. C. R. 222.

Plaintiff claimed damages from the bank for alleged wrongful refusal to cash plaintiff's cheque upon his deposit account at the office of the bank where the cheque was presented for payment, there being, at the time of presentation, at the credit of his account, sufficient funds to meet the amount of the cheque, which was duly drawn and endorsed.

The defence was non-presentment. It appeared that a clerk from the bank which held the cheque presented it at the office of the defendant bank upon which it was drawn, but at the wrong ledger-keeper's wicket, and was directed to present it at another wicket to the clerk there who had charge of the ledger containing the drawer's account. There was no evidence that this was done, but the bank which held the cheque sent out a telegram stating that the drawer had no account. At the close of the plaintiff's evidence, the trial Judge withdrew the case from the jury for want of sufficient evidence, and his order was affirmed.

Hooper vs. Eastern Townships Bank, Q. R. 35 S. C. 221.

Under the provisions in the Bank Act (R. S. C., c. 29, s. 76, s.s. 1, d) that "banks" may engage in and carry on such business generally as appertains to the business of "banking," a bank may lawfully

receive money deposited with it in trust, for the purchase of stock to be transferred by it to the depositor.

2. Such a deposit may be lawfully made in the hands of the manager of the bank, outside the bank premises, at the office of the depositor, to whom the bank, on taking possession of the money, becomes liable for it.

Canadian Express Co. vs. O'Neil, Canadian Express Co. vs. Home Bank (1909), 14 O. W. R. 287.

Actions to recover the moneys paid out by plaintiffs by mistake upon express orders fraudulently issued in their name in favour of A., who had committed forgery to obtain a blank express order book. As soon as plaintiffs knew this they repudiated liability. Defendants cashed one order which was repaid them by the local office.

Held, that defendants must repay plaintiffs. O. had simply endorsed order for identification:

Scott vs. Merchants Bank (1910), 16 O. W. R. 773, 1 O. W. N. 1110.

One, Huether, a customer of two banks, presented two cheques, drawn by himself, for \$7,950. and \$2,050, and asked for the cash from the Dominion Bank, promising to deposit a marked cheque for \$10,000 on Merchants Bank. Later in the day, Huether presented his cheque for \$10,000 on Merchants Bank with letter "D" placed upon it by manager of Merchants Bank. Dominion Bank paid the two cheques, but the Merchants Bank refused to pay the \$10,000 cheque when presented. Both banks suspended their managers, plaintiff being called upon to pay the \$10,000 to Dominion Bank, which he did, taking an assignment of the Dominion Bank's rights against Merchants Bank and brought action to recover.

Held, that the action should be dismissed on the ground that the placing of the letter "D" on the cheque was only authority of the manager to the ledger-keeper to certify to the cheque, and this not having been done, the Merchants Bank was not liable.

Plourde vs. Bank of Montreal (1910), 11 Que. P. R. 429.

Curator of an absentee brought action to recover amount of a deposit standing in name of latter.

Held, that defendants could plead that plaintiff's appointment was tainted with serious irregularities and ask for its annulment.

Brossard vs. Sterling Bank of Canada, 43 S. C. (Que.) Review.

A cheque representing a sum deposited with him, made by the depositary to the order of a public officer and remitted to the person making the deposit to be handed by him to such officer, ceases to belong to the maker after the bank has marked it accepted. Hence, if the maker (the depositary) becomes insolvent and makes an abandonment, his curator cannot refuse, and may be enjoined by the Court, under articles 875 and 866 C. P., to modify the cheque so as to make it payable to the person who has it in his possession. Such person then becomes the legal holder and has recourse against the bank to recover the amount.

Freeman vs. Bank of Montreal, 5 D. L. R. 418. 3 O. W. N. 1364, 22 O. W. R. 276, 26 O. L. R. 451.

The effect of secs. 47, 48 and 165 of the Bills of Exchange Act, R. S. C. 1906, ch. 119, is to constitute a cheque drawn by an infant upon an account standing in his name a complete discharge to the bank which pays it.

A cheque drawn by an infant upon a bank account standing in his name is a good discharge to the bank which pays it, and the amount of a cheque so paid cannot be recovered by the infant from the bank.

Grafton et al vs. La Banque d'Hochelaga, 21 Que. K. B. 97.

A bank that advances money to administrator, duly authorized, of an estate, and for its needs of administration, is not obliged to know for what such advances are used.

Where an executor opens an account for both himself and the estate, in the name of the latter, there is no presumption of fraudulent complicity by the bank in case of improper conversion by the executor of the funds of the estate.

Where the amount of an indebtedness paid through error is represented by notes, surrendered in good faith, at the time of payment, and no longer available, no action lies to recover such amount, nor will action lie to recover moneys alleged to have been improperly paid to a bank by such executor, when the payment has been acquiesced in and tacitly ratified by the representatives of the estate, by dealings, renewals of notes, etc., during a period of six or seven years.

Royal Trust Co. vs. Molsons Bank, 8 D. L. R. 478, 4 O. W. N. 437.

A bank holding notes upon which a depositor is liable as endorser may at any time after the notes become due, apply *pro tanto* the money so on deposit at the credit of the endorser upon his indebtedness under the notes.

The application by a bank of a customer's credit balance on his deposit account against his indebtedness to the bank, is a complete answer to an action by the depositor against the bank for damages in refusing to honour a cheque drawn by the depositor, where, after such application by the bank, no balance remains to the credit of the depositor.

Johnson vs. McRae, 16 B. C. R. 473.

The T. Co. gave a note to J. who endorsed it and handed it to bank for general advances. The note was not paid, and was charged by bank back to J. who sued for amount. While the note was under discount, and after it was due, the defendant voluntarily handed to the bank a share certificate in his favour from the T. Co. (a concern in which defendant was a director and shareholder). This certificate, the evidence showed, was not deposited in pursuance of any previous arrangement, though probably in the hope of securing forbearance in the future.

Held, (1) that defendant was liable upon his endorsement, and (2) in the circumstances in which the share certificate was deposited, it was not available in satisfaction of the claim upon the note.

McLellan vs. Sterling Bank, 2 O. W. N., 708, 18 O. W. N. 641.

Deposit in bank of cheque of deceased. Proceeds. Adverse claim by executors of deceased.

Johns vs. Standard Bank, 2 O. W. N. 910.

Deposit in one bank. Marked cheque of another bank. Failure of bank which marked cheque.

Royal Trust Co. vs. Molsons Bank, 8 D. L. R. 478, 4 O. W. N. 437.

The relation existing between a bank and its depositors as regards the cash deposited is that of debtor and creditor.

The King vs. The Royal Bank, 2 D. L. R. 762. 20 W. L. R. 929.

The proceeds of the sale of bonds of a Provincial railway were, under statutory authority, deposited in a special account in a branch of the bank within the province. A subsequent provincial Act is not invalid as conflicting with the Canada Bank Act, which declares the proceeds of the bonds to be part of the general revenue fund of the province.

Royal Trust Co. vs. Molson's Bank, 8 D. L. R. 478; 4 O. W. N. 437.

As a general deposit in a bank is the property of the bank, the bank's right to apply the same upon its contra account against the customer is one of "set off" rather than one of "lien," the latter term being specially applicable to the right of retention of documentary securities or specific articles.

The receiving of deposits and the honouring of cheques is the primary function of a bank; see notes to sec. 76. See also Falconbridge, chap. 18 on "Deposits and the Current Account."

Sec. 95 enables a bank in receiving deposits, to some extent, to deal with persons otherwise incompetent by provincial law to contract. Up to an aggregate amount of \$500 the bank may receive deposits from any person without regard to whether by provincial law such person could deposit money in, and withdraw money from, a bank.

By section 92 the bank may allow any rate of interest whatever upon money deposited with it. Interest-bearing deposits must be distinguished from other deposits in the annual statement (sec. 54.)

The bank must pay its customer's cheque on presentation if it has funds sufficient to meet the cheque.

Brown vs. Quebec Bank, 2 L. C. J. 253 (1866).

Banking institutions are not liable for any deficit in packages of silver paid out by them, unless the silver be counted and the deficit made known before the packages are taken from the bank.

Saderquist vs. Ontario Bank, 15 O. A. R. 609 (1889).

The plaintiff, a Norwegian by birth, and almost totally ignorant of the English language, in September, 1884, deposited with the defendants at one of their branch offices a sum of money, and received from the bank the usual deposit receipt, at the time signing his name on the stub or counterfoil of the receipt for the purpose of enabling the bank to identify him at any time the money might be demanded. For the purpose of safekeeping, plaintiff, being about to proceed to work elsewhere, left the receipt with one S. S. About seven months afterwards plaintiff returned, when he was informed by S. S. that he had withdrawn the money from the bank, but promised to return it. The plaintiff being ignorant of the manner in which the money had been paid out and of his right as against the defendants, took no steps whatever against them, and S. S. absconded from the country in August, 1885, heavily indebted. In the month of December following, the plaintiff having been informed as to his rights against the bank, consulted a solicitor, who undertook to attend to the matter, but omitted to take any steps, and in the month of April following (1886), the plaintiff, through another solicitor made a demand on the bank for payment, which was refused. The demand so made was the first notice the bank had of the fraud which had been practiced on them.

Held, affirming the judgment of the Chancery Division (14 O. R. 586), (1) that the plaintiff in entrusting the receipt to S. S. was not guilty of any act of negligence; (2) that his delay in notifying the defendants of the fraud perpetrated on them was not a breach of any legal duty on his part so as to stop him from recovering the amount of his deposit.

Scott vs. The Bank of New Brunswick, 31 N. B. 21 (1891).

S., a shipmaster, deposited \$1,000 with a bank in 1883, and received a deposit receipt therefor. He left the receipt with R., the managing owner of his vessel. Soon afterwards he went to sea and remained away till July, 1887. In Decemoer, 1884, R. took the receipt to the bank, with the name of S. endorsed on it, and gave the receipt to the bank, receiving a deposit receipt for the same amount payable to himself. This R. gave the bank as collateral security for the payment of his note for \$1,000 discounted by them, and they afterwards applied it in payment of the note. On the return of S., R. admitted that he had drawn the money and used it, and upon S. threatening him with criminal proceedings, he begged S. not to expose him, and said that if he would wait he would pay him. At this time, R. owed S. \$2,650 besides the amount of the deposit receipt, and he gave S. a bill of exchange for £250 and a mortgage for \$2,500 on some property in which he said he had an interest, payable in one year. S. said nothing to the bank about the matter, but went away again, and did not return for two years. R. left the country in November, 1888. On the return of S., in July, 1889, finding that the bill was dishonored, and that nothing was realized on the mortgage, he demanded the money from the bank, and on their refusal to pay, brought this action for the amount. The jury found that S. had not indorsed the receipt, and that the \$1,000 was not included in the mortgage; and gave a verdict for S.

Held, that S. was estopped by his conduct from recovering against the bank.

(Note—14 Occ. N. 388). The action was twice tried. On the first trial a verdict was given in favor of S., the jury having found that when R. took the deposit receipt to the bank with the name of S. endorsed on it, such endorsement had not been written by S., and the trial judge held that the finding was, in effect, that of forgery by R., which could not be ratified. The jury also found that the security taken by S. did not include the \$1,000. The full court ordered a new trial on the ground that the last finding was against evidence (31 N. B. Reps. 21), and an appeal from that decision to the Supreme Court was not entertained (21 S. C. R. 30). On the second trial the bank obtained a verdict which was affirmed by the full court. On appeal from the latter decision, the Supreme Court of Canada on the 21st May, 1894.

Held, affirming the judgment of the court below (13 Occ. N. 248), and the doctrine of estoppel was not involved in the case; that R. obtained the money from the bank by falsely representing that he had authority from S.; that S., by ratifying and confirming the payment, adopted the agency, and his act made the payment equivalent to one to a person having authority to receive it; and it made no difference, that, by his false representations R. may have committed an indictable offence. See 23 S. C. R. 277 (1894).

McWilliams & Everist vs. Sovereign Bank (1909), 14 Q. W. R. 561.

A canning company was extended credit by defendant bank on

condition that one Dolan should be employed by said company as bookkeeper, etc. The company's cheques were paid by the bank when countersigned by Dolan. Plaintiffs sold the canning company a quantity of fruit and were given a cheque countersigned by Dolan. Bank refused to pay the cheque.

Held, that the bank was not liable under Statute of Frauds, s. 4. *Simpson vs. Dolan* (1908), 16 O. L. R. 459, 11 O. W. R. 590, distinguished.

Ross vs. Chandler (1909), 14 O. W. R. 898, 1 O. W. N. 104.

Action to compel Imperial Bank to pay into Court the proceeds of a cheque in favour of Ross, McRae & Chandler, which had been placed to the credit of a new firm, McRae, Chandler & McNeil, of which plaintiff was not a member. Chandler endorsed the cheque in the name of both the old and new firm, adding his signature each time, and gave bank instructions to place the proceeds to the credit of the new firm. Plaintiff did not question Chandler's right to endorse the cheque, but urged that he was entitled to succeed on the ground that the bank was not a holder in due course.

Held, that all the requirements of s. 56 of the Bills of Exchange Act had been complied with, that the bank received the cheque in good faith and for value, and that when it was negotiated, the bank had no notice of any defect in the title of the person negotiating it. Judgment of Divisional Court (1909), 13 O. W. R. 247, affirming *Riddle, J.* (1908), 12 O. W. R. 341, affirmed.

Canadian Pacific vs. Bank of Hochelaga, 5 E. L. R. 567.

Plaintiffs' instructions to one of their agents was to receive cheques for freight, and forward same to Bank of Montreal, plaintiffs' agent for collection. A son of the station agent having embezzled moneys belonging to plaintiffs, and collected for freight, the agent in order to make up these losses endorsed cheques made payable to the company, and received for freight, signing the company's name, per himself as agent, and received proceeds from the defendants. This he employed making up his son's defalcations.

Held, that defendant should have obtained an authority from the plaintiffs before accepting the agent's endorsements, and therefore was liable to pay plaintiffs the amount of these cheques, which were still plaintiff's property.

Daniels vs. Imperial Bank of Canada, 19 D. L. R. 166, 30 W. L. R. 133.

Where the customer of the bank has two accounts with it, one his personal account and the other in his name with the addition of the words "in trust," but in which he alone was dealt with, the bank has *prima facie* a right to set off an overdraft of the trust account against its indebtedness to him in respect of a credit.

British American Elevator Co. vs. Bank of British North America, 20 D. L. R. 944, 29 W. L. R. 214.

No bank has a reasonable suspicion that money drawn from the trust account by the trustee is being applied in breach of trust, and if the bank is going to derive a benefit from the money being transferred out of the trust account, and intends and designs that it should derive a benefit from it, then the bank is not entitled to honour the cheque drawn upon the trust account without some further enquiry. (*Bridgman vs. Gill*, 24 Beav. 302, and *Coleman vs. Bucks, etc. Bank* [1897] 2 Ch. 243, applied).

Duquet vs. La Banque Nationale, 46 Que. S. C. 131.

A bank which accepts a cheque drawn upon it is not bound to fill in the blank spaces, or to stamp it in such a manner as to make "raising" impossible. Its failure to do so does not make it liable for a larger amount paid by reason of an alteration on the cheque made after acceptance.

Collins vs. Dominion Bank, 8 O. W. N. 432.

Deposit by customer—Entry in Passbook—Estoppel—Evidence—Findings of Fact of Trial Judge.

Annotations.

Banking, deposits, particular purpose, failure of, applications of deposit: 9 D. L. R. 346.

Hamelin vs. Vanasse, 47 Que. S. C. 110.

One who gives a cheque for professional services protesting at the same time that the amount claimed is excessive, but believing himself obliged to make the payments in order to obtain the return of documents which he requires, can afterwards stop payment of this cheque if the amount claimed was really too great, it having been given without consideration.

Allard vs. Demers, 48 Que. S. C. 34.

There is a deposit in the legal sense of the word so long as the preservation of the thing deposited has been the main object of its being placed in the hands of the depository. A document, by which a bank acknowledges having received on deposit a sum of money repayable in ten years on a year's previous notice and carrying interest at 15 per cent. payable monthly, it not a deposit but a loan at interest.

Sask. & Western Elevator vs. Bank of Hamilton, 18 D. L. R. 411, 29 W. L. R. 262.

A bank is not bound by a receipt given by its agent or branch manager in charge of a branch bank to its customer's agent for moneys said to have been deposited to the customer's credit on current account, if no such deposit was in fact made, as it is not within the scope of the manager's authority to give a receipt for money which he had not received, and as such limitation of authority is generally known by business men. *Grant vs. Norway*, 10 C. B., 665, 20 L. J. C. P., 93, applied).

96. Bank not Bound to see to Trust in Deposits.—The bank shall not be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any deposit made under the authority of this Act is subject.

2. Receipt of One of Two Joint Depositors Sufficient—Or of a Majority.—Except only in the case of a lawful claim, by some other person, before repayment the receipt of the person in whose name any such deposit stands, or, if it stands in the names of two persons, the receipt of one, or, if it stands in the names of more than two persons, the receipt of a majority of such persons, shall, notwithstanding any trust to which such deposit is then subject, and whether or not the banks sought to be charged with such trust, and with which the deposit has been made had notice thereof, be a sufficient discharge to all concerned for the payment of any money payable in respect of such deposit.

3. **Application.**—The bank shall not be bound to see to the application of the money paid upon such receipt. 53 V. c. 31, s. 84.

Section 52 provides that the bank shall not be bound to see to the execution of any trust to which any share of its stock is subject. This section contains a similar provision as to any trust to which any deposit made under the authority of this section is subject. See notes to sec. 52.

(1) *Kerry vs. Merchants' Bank*, 32 L. C. J. 121 (1888).

A bank authorized to receive deposits is not bound to see to the execution of any trust, whether express, implied or constructive, to which these deposits are subject; that the receipt furnished by the person in whose name these deposits are entered is a valid discharge.

Bank of Ottawa vs. Hood, 6 E. L. R. 122.

Plaintiff had a power of attorney to receive from the government, moneys for contractors B. & M. Defendants, sub-contractors, wanted some security, and plaintiffs wrote B. & M. that as they received money from government, with their consent they would forward moneys to defendants.

Held, no privity between plaintiffs and defendants. Appeal to Supreme Court allowed.

Schwent vs. Roetter (1910), 16 O. W. R., 5, 21 O. L. R. 112.

A testator during his lifetime signed the following document: "This is to certify that I transfer this money in my name, John Schwent and Magdalena Schwent, in our savings bank account number s. 27 in your bank to the joint credit of myself, the sole survivor, and my daughter, Magdalena Schwent, to be drawn by either of us."

Held, that the daughter Magdalena became entitled to the money so deposited, absolutely in her own right, on the death of her father, *Hill vs. Hill*, 8 O. L. R. 71, distinguished.

Everly vs. Dunkley, 5 D. L. R. 554, affirmed 5 D. L. R. 539.

A written notice to a bank by a depositor to so "arrange" the latter's savings deposit account (then standing in her own name) in the name of the depositor's daughter, that the latter can draw the money, is not sufficient authority to the bank to transfer the deposit to the joint account of the mother and daughter withdrawable by either with right of survivorship.

97. If Depositor Dies, Claim not Exceeding \$500, How Proved.—If a person dies, having a deposit with the bank not exceeding the sum of five hundred dollars, the production to the bank of

(a) any authenticated copy of the probate of the will of the deceased depositor, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same or by any court or authority in England, Wales, Ireland or any British colony, or of any testament, testamentary or testament deive expedé in Scotland; or

(b) an authentic notarial copy of the will of the deceased depositor, if such will is in notarial form, according to the law of the province of Quebec; or.

(c) if the deceased depositor died out of His Majesty's dominions, any authenticated copy of the probate of his will, or letters of administration of his property or other document of like import, granted by any court or authority having the requisite power in such matters;

shall be sufficient justification and authority to the directors for paying such deposit, in pursuance of and in conformity to such probate, letters of administration, or other documents as aforesaid.

2. Deposit of Copy of Document.—When the authenticated copy or other document of like import is produced to the bank under subsection 1 of this section, there shall be deposited with the bank a true copy thereof. 63-64 V., c. 26, s. 20.

DOMINION GOVERNMENT CHEQUES.

98. Dominion Government Cheques to be Paid at Par.

The bank shall not charge any discount or commission for the cashing of any official cheque of the Government of Canada or of any department thereof, whether drawn on the bank cashing the cheque or on any other bank. 53 V., c. 31, s. 103.

Cf. secs. 93 and 94, as to agency and collection charges in other cases.

PURCHASE OF THE ASSETS OF A BANK.

99. Bank may Sell Assets to Another Bank.—Any bank may sell the whole or any portion of its assets to any other bank which may purchase such assets; and the selling and purchasing banks may, for such purposes, enter into an agreement of sale and purchase, which agreement shall contain all the terms and conditions connected with the sale and purchase of such assets.

2. Consent of Minister.—No agreement by a bank to sell the whole or any portion of its assets to another bank shall be made unless and until the Minister, in writing, consents that an agreement under subsection 1 of this section may be entered into between the two banks. 63-64 V., c. 26, s. 32. Am.

Telford vs. Sovereign Bank. 2 O. W. N. 833.

Sale of private banking business.

McFarland vs. The Bank of Montreal and The Royal Trust Co. (1911), A. C. 96, 27 Times L. R. 55.

An agreement between the Bank of Montreal and the Ontario Bank provided for the purchase by the former by way of discount and of re-discount at the rate of 6 per cent. all the call and current loans and overdue debts of the Ontario Bank existing at the close of business on October 12, 1906. Provision was made for advances

by the Bank of Montreal and for the security it was to receive. The Ontario Bank agreed to discontinue business except for the purpose of selling and realizing its assets. There were further special clauses.

Held, that this agreement did not offend against the provisions of the Bank Act (R. S. C. 1906, ch. 29) and was binding. Decision of Court of Appeal of Ontario (21 Ont. L. R. 1) affirmed.

Re Ontario Bank of Montreal's claim (1910), 15 O. W. R. 913, 21 O. L. R. 1.

The Bank of Montreal, at the request of the Ontario Bank, undertook to meet the liabilities of the latter as they fell due, and in order to assist the Bank of Montreal to do so the Ontario Bank agreed to hand over its available commercial assets for that purpose, the Bank of Montreal having full authority to realize upon these assets as it might see fit. The Ontario Bank warranted that the assets handed over were worth \$16,249,080.46 and that the notes and other liabilities of the bank did not exceed \$15,272,271.22. The Ontario Bank agreed to place its office, staff, etc., at the disposal of the Bank of Montreal and to do all in its power to carry out the terms of the agreement. The advances of the Bank of Montreal were to bear interest at the rate of six per cent., and if these were surplus after payment of the liabilities it was to credit the Ontario Bank on the final adjustment of accounts with \$150,000 for the indirect benefit received. The principal objection to the validity of the agreement urged was that it was in reality a transaction of sale by the Ontario Bank, and a purchase by the Bank of Montreal, of the assets of the first named bank, that it fell within the provisions of sections 99 to 111, inclusive, of the Bank Act, and was not legally made in accordance with those provisions, and was *ultra vires*. The Official Referee held that the agreement was binding upon the Ontario Bank and its shareholders. Britton, J., affirmed the Referee in order that an appeal might be taken to the Court of Appeal. The Court of Appeal held, that the transaction was beneficial and advantageous alike to depositors, holders of bills and notes in circulation, and to other creditors, and to the shareholders, and that in its actual working out it enabled the property and assets of that bank to be dealt with and realized without the very serious sacrifice which, but for the arrangements made, would have been inevitable. It was entered into in good faith by the directors, and the arrangement was not beyond their powers. The objections to the provisions of the agreement were satisfactorily dealt with and disposed of by the referee. Appeal dismissed, with costs.

Cameron vs. Royal Bank of Canada, 21 D. L. R. 824, 30 W. L. R. 865.

The purchase by one chartered bank of the entire assets of another chartered bank can only be carried out under statutory authority; and where it is a term of the arrangement as approved by the governor-in-council under secs. 99-111, that the purchasing bank shall assume the liabilities of the selling bank, a statutory obligation is created in respect of each liability which is enforceable by the creditor of the selling bank. (*Davis vs. Taff Vale R. Co.* [1895] A. C. 542; *Watkins vs. Naval Colliery Co.*, [1912] A. C. 693, applied).

Royal Bank of Canada vs. Ball, 19 D. L. R. 875, 7 W. W. R. 174.

Purchase of banking business by bank; its right to take chattel mortgage, Bank Act.

100. Consideration.—The consideration for any such sale and purchase may be as agreed upon between the selling and purchasing banks.

2. If in Shares of Capital Stock.—If the consideration, or any portion thereof, is shares of the capital stock of the purchasing bank, the agreement shall provide for the amount of the shares of the purchasing bank to be paid to the selling bank.

3. Not Considered Issued until Sold or Distributed.—Until such shares so paid to the selling bank have been sold by such bank, or have been distributed among and accepted by the shareholders of such bank, they shall not be considered issued shares of the purchasing bank for the purposes of its note circulation. 63-64 V., c. 26, s. 34.

101. Agreement of Sale to be Submitted to Selling Shareholders at Meeting.—The agreement of sale and purchase shall be submitted to the shareholders of the selling bank, either at the annual general meeting of such bank or at a special general meeting thereof called for the purpose.

2. Copy to Each Shareholder by Mail.—A copy of the agreement shall be mailed, postpaid, to each shareholder of such bank to his last known address, at least four weeks previously to the date of the meeting at which the agreement is to be submitted, together with a notice of the time and place of the holding of such meeting. 63-64 V., c. 26, s. 35.

102. Agreement may be Executed if they Approve.—If at such meeting the agreement is approved by resolution carried by the votes of shareholders, present or presented by proxy, representing not less than two-thirds of the amount of the subscribed capital stock of the bank, the agreement may be executed under the seals of the banks, parties thereto and application may be made to the Governor in Council, through the Minister, for approval thereof.

2. Approval of Governor in Council.—Until the agreement is approved by the Governor in Council it shall not be of any force or effect. 63-64 V., c. 26, s. 36.

103. Approval of Shareholders of Purchasing Bank.—If the agreement provides for the payment of the consideration for such sale and purchase, in whole or in part, in shares of the capital stock of the purchasing bank, and for such purpose it is necessary to increase the capital stock of such bank, the agreement shall not be executed on behalf of the purchasing bank, unless nor until it is approved by the shareholders thereof at the annual general meeting, or at a special general meeting of such shareholders. 63-64 V., c. 26, s. 37.

104. Necessary Increase of Stock may be Approved.—The Governor in Council may, on the application for his approval of the agreement, approve of the increase of the capital stock of the purchasing bank, which is necessary to provide for the payment of the shares of such bank to the selling bank, as provided in the said agreement. 63-64 V., c. 26, s. 38.

105. Ordinary Provisions for Increase not to Apply.—The provisions of this Act with regard to,—

(a) the increase of the capital stock of the bank by by-law of the shareholders approved by the Treasury Board; and,

(b) the allotment and sale of such increased stock; shall not apply to any increase of stock made or provided for under the authority of the last two preceding sections. 63-64 V., c. 26, s. 38.

See sections 33 and 34, for the “provisions” referred to.

106. Conditions on which Governor in Council may Approve Agreement.—The approval of the Governor in Council shall not be given to the agreement, unless,—

(a) the consent of the Minister as prescribed by subsection 2 of section 99 of this Act has been given;

(b) the approval of the agreement is recommended by the Treasury Board;

(c) the application for approval thereof is made, by or on behalf of the bank executing it, within three months from the date of execution of the agreement; and,

(d) it appears to the satisfaction of the Governor in Council that all the requirements of this Act in connection with the approval of the agreement by the shareholders of the selling and purchasing banks have been complied with, and that, after the approval by the shareholders of the selling bank, notice of the intention of the banks to apply to the Governor in Council for the approval of the agreement has been published for at least four weeks in *The Canada Gazette*, and in one or more newspapers published in places where the chief offices of the banks are situate.

2. Information.—Such banks shall afford all information that the Minister requires.

3. Approval may be Refused.—Nothing herein contained shall be construed to prevent the Governor in Council or the Treasury Board from refusing to approve of the agreement or to recommend its approval. 63-64 V., c. 26, s. 39. Am.

107. Further Conditions.—The agreement shall not be approved unless it appears that,—

(a) proper provisions have been made for the payment of the liabilities of the selling bank;

(b) the agreement provides for the assumption and payment by the purchasing bank of the notes of the selling bank issued and intended for circulation, outstanding and in circulation; and.

(c) the amounts of the notes of both the purchasing and selling banks, issued for circulation, outstanding and in circulation, as shown by the then last monthly returns of the banks, do not together exceed the then paid-up capital of the purchasing bank and the amount (if any) held for both of the said banks in the central gold reserves referred to in section 61 of this Act; or if the amount of such notes does exceed such paid-up capital and the amount so held, an amount in cash, equal to the excess of such notes over such paid-up capital and the amount so held, has been deposited by the purchasing bank with the Minister.

2. **Deposit.**—The amount so deposited under paragraph (c) of subsection 1 of this section shall be held by the Minister as security for the redemption of the said excess of notes; and when the amount of the notes of the two banks outstanding and in circulation is less than the aggregate of the paid-up capital of the purchasing bank, the amount aforesaid (if any) held in the central gold reserves, together with the amount so deposited, the difference shall, from time to time, be repaid by the Minister out of the deposit, to the extent thereof to the purchasing bank, but without interest, on the application of such bank, and on the production of such evidence as the Minister may require to show the amount of the notes of the two banks then outstanding and in circulation. 63-64 V. c. 27, s. 1. Am.

108. Notes of Selling Bank to Become Notes of Purchasing Bank.—The notes of the selling bank so assumed and to be paid by the purchasing bank shall, on the approval of the agreement, be deemed to be, for all intents and purposes, notes of the purchasing bank issued for circulation; and the purchasing bank shall be liable in the same manner and to the same extent as if it had issued them for circulation.

2. **Circulation Fund.**—The amount at the credit of the selling bank in the Circulation Fund shall, on the approval of the agreement, be transferred to the credit of the purchasing bank.

3. **As to Withdrawal of Deposit in Central Gold Reserves.**—The trustees shall not permit any part of the deposit (if any) of the selling bank in the central gold reserves to be withdrawn under the provisions of this Act after the last juridical day of the month in which notice of intention to apply to the Governor in Council for approval of the agreement has been given, and pending such approval, unless and until the trustees are notified in writ-

ing by the Minister of his consent thereto; and on the approval of the agreement the trustees shall hold the deposit (if any) for and as if such deposit had been originally made by the purchasing bank.

4. Notes to be Called in.—The notes of the selling bank shall not be re-issued, but shall be called in, redeemed and cancelled as quickly as possible. 63-64 V., c. 26, s. 41.

See sections 61 and 64 *et seq.*

109. Evidence of Approval by Governor in Council.—The approval by the Governor in Council of the agreement shall be evidenced by a certified copy of the order in council approving thereof.

2. Order in Council Conclusive.—A copy of such order in council or extract thereof, and a copy of such agreement, purporting to be certified to be true by the clerk or assistant or acting clerk of the King's Privy Council for Canada shall, in all courts of justice and for all purposes, be *prima facie* evidence of the said agreement, and of its due execution, and of its approval by the Governor in Council, and of the regularity of all proceedings in connection therewith. 63-64 V., c. 26, s. 42. Am.

110. On Approval of Governor in Council the Assets Pass.—On the agreement being approved of by the Governor in Council, the assets therein referred to as sold and purchased shall, in accordance with and subject to the terms thereof, and without any further conveyance, become vested in the purchasing bank.

2. Further Assurance.—The selling bank shall, from time to time, subject to the terms of the agreement, execute such formal and separate conveyances, assignments and assurances, for registration purposes or otherwise, as are reasonably required to confirm or evidence the vesting in the purchasing bank of the full title or ownership of the assets referred to in the agreement. 63-64 V., c. 26, s. 43.

111. Selling Bank to Cease Business and be Wound Up.—As soon as the agreement is approved of by the Governor in Council, the selling bank shall cease to issue or re-issue notes for circulation, and shall cease to transact any business, except such as is necessary to enable it to carry out the agreement, to realize upon any assets not included in the agreement, to pay and discharge its liabilities, and generally to wind up its business; and the charter or Act of incorporation of such bank, and any Acts in amendment thereof then in force, shall continue in force only for the purposes in this section specified. 63-64 V., c. 26, s. 44.

112. Monthly Returns.—Monthly returns shall be made by

the bank to the Minister in the form set forth in Schedule D to this Act.

2. Within First 20 Days.—Such returns shall be made up and sent in within the first twenty days of each month, and shall exhibit the condition of the bank on the last juridical day of the month last preceding.

3. When Return Last Received may be Used.—Notwithstanding anything in this section, whenever, in the usual course of the post, the return of a branch or agency for the last juridical day of the month, mailed at the branch or agency on or before the second day of the following month, does not reach—

(a) the chief office of the bank on or before the eighteenth day of the month; or,

(b) the office of the general manager, if the office of the general manager is at a place other than the chief office of the bank, on or before the fifteenth day of the month;

The return last received from any such branch, exhibiting as far as that branch is concerned the condition of the bank at the date for which it purports to be made, may be used in the compilation of the monthly return called for by this section.

4. How Signed.—The monthly returns shall be signed by the chief accountant, or by the acting chief accountant, and by the president, or vice-president, or the director then acting as president, and by the general manager or other principal officer of the bank next in authority in the management of the affairs of the bank at the time at which the declaration is signed.

5. Names of Directors, President and Vice-President, sent to Minister—Vacancies.—As soon as may be after the annual general meeting there shall be sent to the Minister the names of the directors elected thereat and the names of the president and vice-presidents, and should any casual vacancy occur in the membership of the board of directors, or in the office of president, or vice-president, the Minister shall forthwith be notified of the name of the person by whom the vacancy has been filled.

6. Notice to Minister of Change of Officers.—If any change is made in the holder of the office of chief accountant or of general manager, the Minister shall forthwith be notified of the name of the person by whom the vacancy has been filled.

7. Monthly Returns of Bank of British North America, how Signed.—In the case of the Bank of British North America the returns called for by this section shall be signed by the officer of that bank known as the assistant secretary in the place of the chief accountant as hereinbefore in this section prescribed, and by the general manager at the chief office of that bank under this Act, in the place of the president and general manager as

hereinbefore prescribed, and the part of such return containing the respective forms of declaration in Schedule D shall, for the purposes of returns by the said bank, be modified accordingly.

8. Other Returns by Bank of British North America.—

Any other returns required to be made by a bank under the provisions of this Act shall in like manner in the case of the Bank of British North America be signed by the officers of that bank who are referred to in the next preceding subsection; and the part, if any, of such returns containing the respective forms of declaration shall, for the purposes of returns by the said bank, be modified accordingly. 53 V., c. 31. s. 85. Am.

As to returns to be made by a bank to the government, cf. secs. 113 (special returns), 114 (unpaid dividends, unpaid drafts, certified list of shareholders), 147 to 151 (penalties), 153 (false statement.)

113. Special Returns.—The Minister may also call for special returns from any bank, whenever, in his judgment, they are necessary to afford a full and complete knowledge of its condition.

2. How Made.—Such special returns shall be made and signed in the manner and by the persons specified in the last preceding section.

3. Within 30 Days from Demand.—Such special returns shall be made and sent in within thirty days from the date of the demand therefor by the Minister: Provided that the Minister may extend the time for sending in such special returns for such further period, not exceeding thirty days, as he thinks expedient. 53 V., c. 31, s. 86.

114. Annual Returns of Unpaid Dividends and Balances.—

The bank shall, within twenty days after the close of each calendar year, transmit or deliver to the Minister a return,—

(a) of all dividends which have remained unpaid for more than five years; and,

(b) of all amounts or balances in respect of which no transactions have taken place, or upon which no interest has been paid, during the five years prior to the date of such return: Provided that, in the case of moneys deposited for a fixed period, the said term of five years shall be reckoned from the date of the termination of such fixed period.

2. What Return shall Show.—The return mentioned in the last preceding subsection shall set forth,—

(a) the name of each shareholder or creditor to whom such dividends, amounts or balances are, according to the books of the bank, payable;

(b) the last known address of each such shareholder or creditor;

- (c) the amount due to each such shareholder or creditor;
- (d) the branch or agency of the bank at which the last transaction took place;
- (e) the date of such last transaction; and,
- (f) if such shareholder or creditor is known to the bank to be dead, the names and addresses of his legal representatives, so far as known to the bank.

3. **Further Annual Return.**—The bank shall likewise, within twenty days after the close of each calendar year, transmit or deliver to the Minister a return of all certified cheques, drafts or bills of exchange, issued by the bank to any person, and remaining unpaid for more than five years prior to the date of such return, setting forth so far as known,—

(a) **Particulars.**—The names of the persons to whom, or at whose request, such drafts, certified cheques, or bills of exchange were issued;

(b) the addresses of such persons;

(c) the names of the payees of such drafts or bills of exchange;

(d) the amounts and dates of such certified cheques, drafts or bills of exchange;

(e) the names of the places where such certified cheques, drafts, or bills of exchange were payable; and,

(f) the branches or agencies of the bank respectively from which such drafts, certified cheques, or bills of exchange were issued.

4. **Amounts under Five Dollars.**—If a dividend amount or balance, certified cheque, draft or bill of exchange is for a less sum than five dollars, and returns in respect thereof have been made under the preceding provisions of this section for five consecutive years, the bank may hereafter omit from the respective returns particulars required by the said provisions with regard to any such dividend, amount or balance, certified cheque, draft or bill of exchange.

5. **Declarations and Signatures.**—The returns required by the foregoing provisions of this section shall be accompanied by declarations which shall be a part of the return, and the declarations shall be in the form set forth in Schedule F to this Act, and shall be signed by the chief accountant, and by the president or a vice-president or the director then acting as president, and by the general manager or other principal officer of the bank next in authority in the management of the affairs of the bank at the time at which the declaration is signed.

6. **Notice that Dividend, Draft or Cheque Remains Un-**

paid.—The bank shall transmit by registered post to the person to whom any such dividend, amount or balance is payable, and to the person to whom (in so far as known to the bank) and to the person at whose request any such draft, certified cheque or bill of exchange was issued, to the last known post office address of each person as shown by the books of the bank, a notice in writing stating that such dividend remains unpaid, or that in respect of such amount or balance no transaction has taken place or no interest has been paid, or that such draft, certified cheque or bill remains unpaid, as the case may be.

7. When Notice to be Given.—The notice called for by the next preceding sub-section is required to be given once only, namely, during the month of January next after the end of the first five year period in respect of which,—

(a) the dividend has remained unpaid; or

(b) no transaction has taken place or no interest has been paid in connection with such amount or balance; or

(c) the draft, certified cheque or bill has remained unpaid.

8. Certified Annual List of Shareholders Transmitted to Minister.—The bank shall, within twenty days after the close of each calendar year, transmit or deliver to the Minister a list, certified by the general manager or other principal officer of the bank next in authority in the management of the affairs of the bank at the time at which the list is certified, and by the officer of the bank in charge of the register of shareholders, to be a correct list and in accordance with the books of the bank with regard thereto; and the list shall show,—

(a) the names of the shareholders of the bank on the last day of such calendar year, with their last known post office addresses and descriptions;

(b) the number of shares then held by them respectively; and

(c) the amount paid thereon.

9. Laid before Parliament.—The Minister shall lay such returns and lists before Parliament at the next session thereof. 53 V., c. 31, ss. 87 and 88; 63-64 V., c. 26, ss. 21. Am.

The effect of the first two sub-sections is to secure to a bank, so long as it is solvent, the benefit of unpaid dividends and other amounts and balances in respect of which transactions have ceased to take place or interest ceased to be paid. Until the dividends, etc., are claimed, the sole obligation of the bank is to make the required returns so as to give notice by means of the government publications to any persons who may be entitled and allow them an opportunity to claim payment.

The liability of a bank for moneys deposited with it or dividends declared and payable on its capital stock is never barred by any statute of limitations or enactment or law relating to prescrip-

tion. It is therefore necessary, in the event of the winding-up of a bank, to provide a fund to meet claims which may be made from time to time to unpaid dividends and deposits, and interest, if any. This is done by section 115.

The purpose of sub-section 3 is to give notice to persons in whose favour any drafts or bills may have been issued, and to allow them an opportunity to claim the proceeds.

The lists of shareholders are published annually by the government.

PAYMENTS TO THE MINISTER UPON WINDING UP.

115. Unclaimed Moneys Paid to Minister on Winding Up of Bank—With Interest.—If, in the event of the winding up of the business of the bank in insolvency, or under any general winding-up Act, or otherwise, any moneys payable by the liquidator, either to shareholders or depositors, remain unclaimed,—

(a) for the period of three years from the date of suspension of payment by the bank; or,

(b) for a like period from the commencement of the winding up of such business; or,

(c) until the final winding up of such business, if the business is finally wound up before the expiration of the said three years;

such moneys and all interest thereon shall, notwithstanding any statute of limitations or other Act relating to prescription, be paid to the Minister, to be held by him subject to all rightful claims on behalf of any person other than the bank.

2. Governor in Council may Order Payment to Person Entitled—Interest.—If a claim to any moneys so paid is thereafter established to the satisfaction of the Treasury Board, the Governor in Council shall, on the report of the Treasury Board, direct payment thereof to be made to the person entitled thereto, together with interest on the principal sum thereof, at the rate of three per cent. per annum for a period not exceeding six years from the date of payment thereof to the Minister as aforesaid: Provided that no such interest shall be paid or payable on such principal sum unless interest thereon was payable by the bank paying the same to the Minister.

3. Bank Discharged.—Upon payment to the Minister as here-in provided, the bank and its assets shall be held to be discharged from further liability for the amounts so paid. 53 V., c. 31, s. 88.

See notes to sec. 114.

116. Circulation Outstanding at Distribution of Assets.—Upon the winding up of a bank in insolvency or under any general winding-up Act, or otherwise, the assignees, liquidators, directors, or other officials in charge of such winding up, shall, before the final distribution of the assets, or within three years from

the commencement of the suspension of payment by the bank, whichever shall first happen, pay over to the Minister a sum, out of the assets of the bank, equal to the difference between the amount then outstanding of the notes intended for circulation issued by the bank, together with any interest on such outstanding notes which may have accrued under section 65 of this Act and the aggregate of the amount at the credit of the bank in the Circulation Fund and the amount (if any) paid to the Minister by the trustees under section 61 of this Act.

2. **Bank Relieved.**—Upon such payment being made, the bank and its assets shall be relieved from all further liability in respect of such outstanding notes.

3. **Minister to Redeem.**—The sum so paid shall be held by the Minister and applied for the purpose of redeeming, whenever presented, such outstanding notes, without interest, except such as may have been paid over under this section. 53 V., c. 31, s. 88. Am.

This section is designed to guard against the charging of the Bank Circulation Redemption Fund with the payment of the notes of an insolvent bank which are presented after the liquidator has distributed the assets.

CURATOR.

117. **Association to Appoint Curator.**—The Association shall, if a bank suspends payment in specie or Dominion notes of any of its liabilities as they accrue, forthwith appoint a curator to supervise the affairs of such bank.

2. **Removal.**—The Association may at any time remove the curator, and may appoint another person to act in his stead. 63-64 V., c. 26 s. 24.

See section 2.

118. **Appointment by Association.**—The appointment of the curator shall be made in the manner provided for in the by-law of the Association made in that behalf as hereinafter provided.

2. **If No By-Law.**—If there is no such by-law the appointment shall be made in writing by the president of the Association, or by the person acting as president. 63-64 V., c. 26, s. 25.

See section 124.

119. **Powers and Duties of Curator.**—The curator shall assume supervision of the affairs of the bank, and of all necessary arrangements for the payment of the notes of the bank issued for circulation, and, at the time of his appointment, outstanding and in circulation.

2. **Generally.**—The curator shall generally have all powers and shall take all steps and do all things necessary or expedient

to protect the rights and interests of the creditors and shareholders of the bank, and to conserve and ensure the proper disposition, according to law, of the assets of the bank; and, for the purposes of this section, he shall have free and full access to all books, accounts, documents and papers of the bank.

3. Supervision.—The curator shall continue to supervise the affairs of the bank until he is removed from office, or until the bank resumes business, or until a liquidator is duly appointed to wind up the business of the bank. 63-64 V., c. 26, s. 26.

In re O'Neil, 5 D. L. R. 646, 19 Can. Cr. Cas. 410, 17 B. C. R. 123.

A warrant for the extradition to a foreign state of a bank officer for receiving deposits with knowledge of the insolvency of the bank may be sustained under sec. 405, Crim. Code, 1906.

120. Officers and Clerks to Assist Curator.—The president, vice-president, directors, general manager, managers, clerks and officers of the bank shall give and afford to the curator all such information and assistance as he requires in the discharge of his duties. 63-64 V., c. 26, s. 27.

121. No Act of Directors Valid unless Approved by Curator.—No by-law, regulation, resolution or act, touching the affairs or management of the bank, passed, made or done by the directors during the time the curator is in charge of the bank, shall be of any force or effect until approved in writing by the curator. 63-64 V., c. 26, s. 27.

122. Curator to make Returns as Required by Minister.—The curator shall make all returns and reports, and shall give all information to the Minister, touching the affairs of the bank, that the Minister requires of him. 63-64 V., c. 26, s. 28.

123. Remuneration of Curator.—The remuneration of the curator for his services, and his expenses and disbursements in connection with the discharge of his duties, shall be fixed and determined by a judge of a superior court in the province where the chief office of the bank is situate, and shall be paid out of the assets of the bank, and, in case of the winding up of the bank, shall rank on the estate equally with the remuneration of the liquidator. 63-64 V., c. 26, s. 29.

Cf. sec. 92, Winding-up Act.

BY-LAWS OF THE CANADIAN BANKERS' ASSOCIATION.

124. By-Laws.—The Association may, at any meeting thereof, with the approval of two-thirds in number of the banks represented at such meeting, if the banks so approving have at least

two-thirds in par value of the paid-up capital of the banks so represented, make by-laws, rules and regulations respecting,—

(a) **As to what Subjects.**—All matters relating to the appointment or removal of the curator, and his powers and duties;

(b) the supervision of the making of the notes of the banks which are intended for circulation, and the delivery thereof of the banks;

(c) the inspection of the disposition made by the banks of such notes;

(d) the destruction of notes of the banks;

(e) the custody and management of the central gold reserves and the carrying out of the provisions of this Act relating to such reserves; and

(f) the imposition of penalties for the breach or non-observance of any by-law, rule or regulation made by virtue of this section.

2. Approval by Treasury Board.—No such by-law, rule or regulation, and no amendment or repeal thereof, shall be of any force or effect until approved by the Treasury Board.

3. Notice to other Banks.—Before any such by-law, rule or regulation, or any amendment or repeal thereof is so approved, the Treasury Board shall submit it to every bank which is not a member of the Association and give to each such bank an opportunity of being heard before the Treasury Board with respect thereto.

4. Enforcement of By-Laws.—The Association shall have all powers necessary to carry out, or to enforce the carrying out, of any by-law, rule or regulation, or any amendment thereof, so approved by the Treasury Board. 63-64 V., c. 26, ss. 30 and 31.

The Association is defined by sec. 2 to mean the Canadian Bankers' Association, incorporated by 63 and 64 Vict., c. 93.

Certain by-laws passed by the Association in pursuance of its Act of Incorporation, and of secs. 117 to 124 of the Bank Act, have been approved by the Treasury Board and have the force of law. By-laws 14 and 15 relate to the curator. By-law 13 relates to note circulation. By-law 16 relates to clearing houses.

INSOLVENCY.

125. Double Liability of Shareholders.—In the event of the property and assets of the bank being insufficient to pay its debts and liabilities, each shareholder of the bank shall be liable for the deficiency, to an amount equal to the par value of the shares held by him, in addition to any amount not paid up on such shares.

2. **"Shareholder" defined.**—"Shareholder," within the meaning of this section, shall include an undisclosed principal, and, to the extent of his interest, a *cestui que trust*, on whose behalf or for whose benefit shares in the capital stock of the bank are held. 53 V., c. 31, s. 89.

Re Ontario Bank; Massey & Lee's Case, 5 D. L. R. 243. 4 O. W. N. 67.

Held, The holders of paid-up shares on the date of the commencement of the winding up are liable as contributories, notwithstanding a subsequent transfer by them of their shares and the fact that a judgment was obtained against the transferees by the liquidator.

Held also, that though the liquidator puts upon the list of contributories the names of such transferees, this does not constitute an election on his part to accept the transferees as contributories instead of the original holders.

This section is commonly known as the double liability clause. Its effect is to render a shareholder liable (in addition to the extent to which his shares are not paid up) for an amount equal to the par value of the shares held by him, or so much of such amount as may be needed to pay the debts and liabilities of the bank.

As to what persons are shareholders, see secs. 37, 43 et seq., 53 and 130. (Cf. also secs. 51, 52, 53 and 71 of the Winding-up Act. *supra*).

Court vs. Waddell, 4 L. N. 78 (1881).

A director of a bank who has drawn dividends on his stock cannot escape double liability on account of the absence of a by-law authorizing the issue of the preferential stock.

Gilman vs. Court, 13 R. L. 619 (1882).

Where a shareholder of a bank acquires debts of the bank after the suspension of the bank, he cannot offer these debts in compensation of calls on his double liability made by the liquidator under 34 V., c. 5.

Exchange Bank vs. Montreal City and District Savings Bank, M. L. R. 2 S. C. 51 (1885).

A bank whose shares are transferred to a savings bank is presumed to know that they are held by the latter as collateral security, inasmuch as under section 18 of 34 Vict., chap. 7, a savings bank cannot acquire bank shares or hold them except as pledgee.

Liquidators of the Maritime Bank vs. Troop, 16 S. C. R. 456 (1888).

A contributory of an insolvent company, who is also a creditor, cannot set off the debt due to him by the company against calls made in the course of winding-up proceedings in respect of the double liability imposed by the Bank Act.

See Re Central Bank vs. Home Savings and Loan Co.'s Case, 18 O. A. R. 489 (1891). See under sec. 130.

(1) *Senecal vs. Exchange Bank*, M. L. R., 2 S. C. 107 (1884).

The creditor of an incorporated bank which has suspended its payments can, even before the expiration of 90 days from the date of such suspension, sue the bank and obtain judgment for the amount of his claim.

(2) *Exchange Bank vs. Hall*, M. L. R., 2 Q. B. 409 (1886).

The respondent having funds to his credit in a bank which had suspended payment, drew cheques on the bank for various sums. These cheques were accepted by the bank on the same day, and the respondent then, for valuable consideration, disposed of them to various parties, who were paid the respective amounts by the bank by credits or otherwise.

Held, that the bank had no action against respondent to recover the amount of the cheques so paid, their recourse, if any, being against the parties to whom they had paid the money.

(3) *Exchange Bank vs. Montreal Coffee House Association*, M. L. R., 2 S. C. 141 (1886).

The provisions of 45 Vict., chap. 23, override any rule as to insolvency contained in the Civil Code, therefore only payments made by an insolvent corporation within thirty days before the commencement of the winding-up order, *i.e.*, the date of the order made by the court for the winding up, can be recovered by the liquidators.

In any case, a deposit of money made with a bank on the day and at the very hour when it suspended payments may lawfully be returned to the depositor.

(4) *Ontario Bank vs. Chaplin*, 20 S. C. R. 152 (1891).

A person who makes a deposit with a bank after its suspension, the deposit consisting of cheques of third parties drawn on and accepted by the bank in question, is not entitled to be paid by privilege the amount of such deposit.

Sisters of Charity vs. Kent, R. J. Q., 13 K. B. 483.

After a bank has suspended payments, and its insolvency is notorious, compensation of a debt due to the bank cannot be effected by a transfer to the debtor of debts due by the bank to third parties, where such transfer has been made to the debtor after the suspension and within thirty days prior to winding-up proceedings under the Winding-up Act. This rule is not affected by the circumstance that the amounts offered in compensation consisted of moneys deposited with the bank by such third parties, for the special purpose of aiding the debtor to meet his indebtedness to the bank, but not transferred to the debtor until after the suspension of payments.

Re Farmers' Bank of Canada (Murray's Case), *Sproat's Executors' Case*, 14 D. L. R. 596, 5 O. W. N. 272.

A subscriber for bank shares who, before its organization, rescinds his subscription for fraud, and receives back the money he paid thereon, cannot, on the subsequent insolvency of the bank be placed on the list of contributories or held for the double liability of a shareholder, notwithstanding that on the organization of the bank, shares were allotted him, where such allotment was made without his knowledge and no calls were ever made on, or any shares ever issued to, or received by him, or any dividend paid to him, and he had never attended or voted at a shareholders' meeting, or knowingly permitted his name to appear as a shareholder.

126. Suspension for 90 Days to Constitute Insolvency.—

Any suspension by the bank of payment of any of its liabilities as they accrue, in specie or Dominion notes, shall, if it continues

for ninety days consecutively, or at intervals within twelve consecutive months, constitute the bank insolvent, and work a forfeiture of its charter or Act of incorporation, so far as regards all further banking operations. 53 V., c. 31, s. 91.

127. Charter to Remain in Force for Calls and Winding Up.

—The charter or Act of incorporation of the bank shall, in the case mentioned in the next preceding section, remain in force only for the purpose of enabling the directors, or other lawful authority, to make and enforce the calls mentioned in the next following section of this Act, and to wind up the business of the bank. 53 V., c. 31, s. 91. Am.

Telford vs. Sovereign Bank, 2 O. W. N. 833; 18 O. W. R. 506.

Sale of private banking business. Bank becoming insolvent.

After a suspension of payment for a less period than would constitute it insolvent under this section, a bank may resume business, but if it does so without the consent of the curator, its right to issue or re-issue notes is subject to the provisions of sec. 61. If the suspension continues for more than 90 days, either consecutively, or at intervals within 12 consecutive months, such suspension constitutes the bank insolvent and operates a forfeiture of its charter to the extent provided for by sec. 127.

This section is supplementary to the provisions of the Wind-up Act, see secs. 3 and 4 of that Act.

128. If no Proceedings within Three Months thereafter, Directors to make Calls.

—If any suspension of payment in full, in specie or Dominion notes, of all or any of the notes or other liabilities of the bank, continues for three months after the expiration of the time which, under the two last preceding sections, would constitute the bank insolvent and if no proceedings are taken under any Act for the winding up of the bank, the directors shall make calls on the shareholders thereof, to the amount they deem necessary to pay all the debts and liabilities of the bank not exceeding the limit of liability of the shareholders hereinbefore specified without waiting for the collection of any debts due to the bank or the sale of any of its assets or property.

2. **Intervals.**—Such calls shall be payable at intervals of thirty days.

3. **Notice.**—Notice of such calls shall be given to the shareholders.

4. **Number.**—Any number of such calls may be made by one resolution.

5. **Amount.**—No such call shall exceed twenty per cent. on each share.

6. **Payment.**—Payment of such calls may be enforced in like manner as payment of calls on unpaid stock may be enforced.

7. **First Call.**—The first of such calls may be made within ten days after the expiration of the said three months.

8. **Procedure.**—In the event of proceedings being taken, under any Act, for the winding up of the bank in consequence of the insolvency of the bank, the said calls shall be made in the manner prescribed for the making of such calls in such Act.

9. **Forfeiture for Non-Payment—Proviso.**—Any failure on the part of any shareholder liable to any such call to pay the same when due, shall work a forfeiture by such shareholder of all claim in or to any part of the assets of the bank: Provided that such call, and any further call thereafter, shall nevertheless be recoverable from him as if no such forfeiture had been incurred. 53 V., c. 31, ss. 92, 93 and 94. Am.

After a bank has been constituted insolvent under sec. 127, proceedings may be taken under the Winding-up Act. If no such proceedings are taken and the suspension of payment in full of all or any of the notes or other liabilities continues for three months after the bank has become insolvent under that section, the directors are obliged under sec. 128 to make calls on the shareholders to the amount the directors deem necessary to pay all the debts and liabilities of the bank, without waiting for the collection of any debts due to it or the sale of any of its assets or property.

As to the application for a winding-up order, and the appointment of a liquidator, see secs. 151 *et seq.* of the Winding-up Act.

As to the effect of a Winding-up order, see secs. 20 to 23 of the Winding-up Act.

The settlement of the list of contributories, the making of calls upon shareholders, etc., is provided for by secs. 48 *et seq.* of the Winding-up Act.

A director who refuses to make or to enforce, or to concur in making or in enforcing any call under sec. 128 is criminally liable under sec. 154 of the Bank Act.

Re Farmers' Bank (Dewar's Case), 9 O. W. N. 112.

Winding-up—Decease of person named on list of contributories—Order Substituting Executors.

Re Monarch Bank of Canada, 20 D. L. R. 108, 32 D. L. R. 207.

Subscribers for shares in a bank which never went into operation because of failure to get the necessary amount of subscriptions to obtain a certificate from the Treasury Board (Can.), and to whom the provisional directors had made allotments, may be placed on the list of contributories on the winding-up of the bank; a subscriber who has paid his entire subscription may be placed on the list of contributories for the purpose of apportioning the amount returnable to him over and above the amount which may be found to be his proper share. (*Atty.-Gen. vs. Great Eastern*, 5 App. Cas. 473, and *Re Anglesea Colliery*, L. R. 1 ch. 555, applied).

129. Liability of Directors not Diminished.—Nothing in the four sections last preceding shall be construed to alter or diminish the additional liabilities of the directors as herein mentioned and declared. 53 V., c. 31, s. 95.

See sec. 58 (impairing capital); sec. 139 (pledging or improperly issuing or taking bank notes); sec. 153 (false or deceptive statement); sec. 155 (giving undue preference).

130. Liability of Shareholders who have Transferred their Stock.—(a) Persons who, having been shareholders of the bank, have only transferred their shares, or any of them, to others as hereinbefore provided, within sixty days before the commencement of the suspension of payment by the bank; and,

(b) **Or Whose Subscriptions have been Cancelled.**—Persons whose subscriptions to the stock of the bank have been forfeited in manner hereinbefore provided, within the said period of sixty days before the commencement of the suspension of payment by the bank;

shall be liable to all calls on the shares held or subscribed for by them, as if they held such shares at the time of such suspension of payment, saving their recourse against those by whom such shares were then actually held. 53 V., c. 31, s. 96.

Re Ontario Bank; Massey & Lee's Case, 8 D. L. R. 243, 4 O. W. N. 67.

The mere entry in the transfer book of the company of a transfer of stock, after the commencement of the winding-up proceedings, will not shift the responsibility as contributories under sec. 130 of the Bank Act, R. S. C. 1906, ch. 29, from the transferrers to the transferees. Dictum per Garrow, J.

Under section 125 every holder of a share of bank stock assumes a liability to contribute to the assets of the bank, in the event of its insolvency, a sum equal to the par value of the share. In the case of a person within sec. 37, this liability continues in force even after the registration upon the bank books of a transfer of the share to another person. It is extinguished only when the bank has continued for 60 days, after such registration, to carry on its business without any suspension of payment. Every transaction in bank shares must be taken to be made subject to the possibility that this well-known statutory liability may be enforced in case the insolvency of the bank occurs within the statutory period. The transferee or actual holder of a share at the time of the suspension is liable himself, and he is bound, as between himself and the person from whom he purchased the share, to assume, and indemnify the latter against, the liability attached to the share.

See *Boulbee vs. Gzowski*, 1896, 28 O. R. 302, 24 A. R. 502, 29 S. C. R. 54.

In re Central Bank, Baine's Case, 16 O. A. R. 237 (1889).

No special directions as to the transfer of shares had been formally adopted by the directors of the bank, but the transfer book had been prepared for and adapted to a system of marginal transfer. One C. transferred certain shares in blank, subject by a marginal note initialed by C., to the order of a broker, and subject by subsequent marginal note, initialed by the broker, to the order of B. B., signed an acceptance of the shares immediately under the transfer in blank signed by C., and was entered in the books of the bank as the holder of the shares, the intermediate transfers to and

from the broker being omitted. The transfer to B. and acceptance by him took place within a month of the time of the suspension.

Held, that this transfer and acceptance were a sufficient compliance with, or at least not in any way a violation of the statutory provisions, and that B. became the legal holder of the shares, and was liable as a contributory.

Sections 70 and 77 of R. S. C., 1886, ch. 20, must be read together, and make liable as contributories all those who hold shares at the time of the suspension of the bank, or who have held shares at any time within one month before the suspension.

Re Central Bank, Henderson's Case, 17 O. R. 110 (1889).

Held, that H., who had acquired certain shares in a bank within one month before the suspension of the bank, was rightly on the list of contributories as to these shares, but that his transferrers should also be placed upon it.

Re Central Bank vs. Home Savings and Loan Co.'s Case, 18 O. A. R. 489 (1891).

After a winding-up order has been made it is too late for holders of shares, entered as such in the books of the bank, to escape liability by showing irregularities in transfers to more or less remote predecessors in title.

A loan company which advances money on the security of shares, which are transferred to it, and accepted by it, in the ordinary absolute form, cannot escape liability on the ground that it is merely a trustee for the borrower.

Re Central Bank vs. Hogg, 19 O. R. 7 (1892).

A minor's father signed her name to a stock subscription book of a bank, paid the calls and received the dividend cheques which were endorsed by her at her father's request, the moneys being received by him. The bank was put into liquidation by winding-up proceedings, and the order for call against contributories was made three months before she came of age. A year after the liquidation commenced, she took proceedings to have her name removed from the list of contributories:—

Held, that she was not liable as a contributory, and that her name must be removed from the list.

Ville Marie Bank vs. Kent, 4 Q. P. R., 429.

One who holds bank shares as institute may be held liable as a contributory when the bank is put into liquidation.

Tempest vs. Bertrand, R. J. Q., 19 S. C., 365 (1901).

The mandatory to whom the mandator has confided a sum of money to discharge a debt due by the mandator to a third party residing abroad, and who, during the time necessary to find the creditor and obtain from him a sufficient power of attorney to make the payment, has deposited the said sum in a bank duly constituted and then enjoying the public confidence, instead of keeping it himself,—is not responsible for the subsequent failure of the said bank, before he was able to execute his mandate.

Kent vs. Bastien, R. J. Q., 12 K. B., 120 (1902).

A liquidator of a bank in liquidation is not as such qualified to sue a debtor of the bank, on a note matured before the proceedings in liquidation, but the action should be taken in the name of the bank.

131. Order of Charges.—In the case of the insolvency of any bank;—

(a) **Notes.**—The payment of the notes issued or re-issued by such bank, intended for circulation, and then in circulation, together with any interest paid or payable thereon as hereinbefore provided, shall be the first charge upon the assets of the bank;

(b) **Dominion Government.**—The payment of any amount due to the Government of Canada, in trust or otherwise, shall be the second charge upon such assets;

(c) **Provincial Governments.**—The payment of any amount due to the government of any of the provinces, in trust or otherwise, shall be the third charge upon such assets; and,

(d) **Penalties.**—The amount of any penalties for which the bank is liable shall not form a charge upon the assets of the bank, until all other liabilities are paid. 53 V. c. 31, s. 53.

OFFENCES AND PENALTIES.

Payments of Incorporation and Organization Expenses.

131a. Offences—Payments of Expenses Prior to Obtaining Treasury Board Certificate.—If prior to the time at which the certificate permitting the bank to issue notes and commence the business of banking has been obtained from the Treasury Board, any provisional director or director authorizes or is a party to the payment of, or receives, out of the moneys paid in by subscribers or interest thereon, any sum for commission, salary or charges for services in connection with or arising out of the incorporation or organization of the bank, it shall be an offence against this Act.

2. After Certificate Obtained.—If after the certificate has been obtained from the Treasury Board, any director authorizes payment of, or any general manager or other officer of the bank pays or causes to be paid any money for or on account of the incorporation or organization expenses of the bank, except and unless the sum so paid is mentioned or included in the statement submitted to the Treasury Board at the time at which the application is made under this Act to the Board for a certificate permitting the bank to issue notes and commence the business of banking, it shall be an offence against this Act.

3. When no Certificate Obtained.—If no certificate from the Treasury Board has been obtained within the time limited by this Act, it shall be an offence against this Act for any provisional director or director to authorize or be a party to the payment of, or to receive, out of moneys paid in by subscribers, any sum for commission, salary or charges for services in connection with or arising out of the incorporation or organization of the bank, unless provision has been made pursuant to section 16 of this Act for payment.

131b. Penalty for Bank Officers Obtaining Gifts or Showing Favour.—Everyone is guilty of an offence and liable, upon conviction on indictment, to two years' imprisonment or to a fine not exceeding two thousand five hundred dollars, or to both, and, upon summary conviction, to imprisonment for six months, with or without hard labour, or to a fine not exceeding one hundred dollars, or both, who—

(a) Being a director, general manager, manager, or other executive officer of a bank, corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having, after this Act comes into force, done or forborne to do, any act relating to the bank's business or affairs, or for showing or forbearing to show favour or disfavour to any person with relation to the bank's business or affairs; or,

(b) **Penalty for Offering Gifts or Showing Favour to Bank Officers.**—Corruptly gives or agrees to give or offers any gift or consideration to any director, general manager, manager, or other executive officer of a bank as an inducement or reward or consideration to such director, general manager, manager, or other executive officer of the bank, for doing or forbearing to do, or for having, after this Act comes into force, done or forborne to do any act relating to the bank's business or affairs, or for showing or forbearing to show favour or disfavour to any person with relation to the bank's business or affairs.

2. **"Consideration" Defined.**—In this section "consideration" includes valuable consideration of any kind.

Commencement of Business.

132. Commencing Business without Certificate—Offence.—Every director or provisional director of any bank and every other person who, before the obtaining of the certificate from the Treasury Board, by this Act required, permitting the bank to issue notes, or commence business, issues or authorizes the issue of any note of such bank, or transacts or authorizes the transaction of any business in connection with such bank, except such as is by this Act authorized to be transacted before the obtaining of such certificate, is guilty of an offence against this Act. 53 V., c. 31, s. 14.

See sec. 14. The penalty is provided in sec. 157.

133. Sale and Transfer of Shares Contrary to Requirements—Offence.—Any person, whether principal, broker or agent, who wilfully sells or transfers or attempts to sell or transfer,—

(a) any share or shares of the capital stock of any bank by a false number; or,

(b) any share or shares, of which the person making such sale or transfer or, in whose name or on whose behalf the same is made, is not at the time of such sale, or attempted sale, the registered owner; or,

(c) any share or shares, without the assent to such sale of the registered owner thereof;

is guilty of an offence against this Act. 53 V., c. 31, s. 37.

See sec. 45 and sec. 157.

Cash Reserves.

134. Penalty for Cash Reserve not Held in Prescribed Notes.—Every bank which at any time holds in Dominion notes less than forty per cent. of the cash reserves which it has in Canada shall incur a penalty of five hundred dollars for each such offence. 53 V., c. 31, s. 50. Am.

See sec. 60 and sec. 158.

Issue and Circulation of Notes.

135. Excess of Circulation.—If the total amount of the notes of the bank in circulation at any time exceeds the amount authorized by this Act the bank shall.—

(a) if the amount of such excess is not over one thousand dollars, incur a penalty equal to the amount of such excess; or,

(b) if the amount of such excess is over one thousand dollars, and not over twenty thousand dollars, incur a penalty of one thousand dollars; or,

(c) if the amount of such excess is over twenty thousand dollars, and not over one hundred thousand dollars, incur a penalty of ten thousand dollars; or,

(d) if the amount of such excess is over one hundred thousand dollars, and not over two hundred thousand dollars, incur a penalty of fifty thousand dollars; or,

(e) if the amount of such excess is over two hundred thousand dollars, incur a penalty of one hundred thousand dollars. 53 V., c. 31, s. 51.

See sec. 61, sec. 158.

136. Unauthorized Issue of Notes for Circulation.—Every person, except a bank to which this Act applies, who issues or re-issues, makes, draws, or endorses any bill, bond, note, cheque or other instrument, intended to circulate as money, or to be used as a substitute for money, for any amount whatsoever, shall incur a penalty of four hundred dollars.

2. Penalty, Recovery of.—Such penalty shall be recoverable with costs, in any court of competent jurisdiction, by any person who sues for the same.

3. **Appropriation.**—A moiety of such penalty shall belong to the person suing for the same, and the other moiety to His Majesty for the public uses of Canada.

4. **Intention Presumed—Exceptions.**—If any such instrument is made for the payment of a less sum than twenty dollars, and is payable either in form or in fact to the bearer thereof, or at sight, or on demand, or at less than thirty days thereafter, or is overdue, or is in any way calculated or designed for circulation, or as a substitute for money, the intention to pass the same as money shall be presumed, unless such instrument is.—

(a) a cheque on some chartered bank paid by the maker directly to his immediate creditor; or,

(b) a promissory note, bill of exchange, bond or other undertaking for the payment of money made or delivered by the maker thereof to his immediate creditor; and,

(c) not designed to circulate as money or as a substitute for money. 53 V., c. 31, s. 60.

The joint effect of this section and of the Dominion Notes Act is to reserve to the chartered banks and to the Government of Canada the exclusive privilege of issuing notes intended to circulate as money.

137. Defacement of Notes—Penalty.—Every person who mutilates, cuts, tears or perforates with holes any Dominion or bank note, or who in any way defaces a Dominion or bank note, whether by writing, printing, drawing or stamping thereon, or by attaching or affixing thereto anything in the nature or form of an advertisement shall, on summary conviction, be liable to a penalty not exceeding twenty dollars.

2. **Issue, by Bank, of Notes not Disinfected or Sterilized.**—Every officer, clerk and servant of a bank who, for the bank, re-issues to the public any bank notes or Dominion notes which have not been disinfected and sterilized in accordance with the regulations made by the Treasury Board under the authority of this Act shall, on the information of any person, on summary conviction, be liable to a penalty not exceeding twenty dollars.

3. **Penalty.**—In the event of the conviction of any officer, clerk or servant of a bank under this section, the bank shall thereby incur a penalty of fifty dollars. 53 V., c. 31, s. 61. Am.

138. (a) Issuing Notes during Period of Suspension.—Every person who, being president, vice-president, director, general manager, manager, clerk or other officer of the bank, issues or re-issues, during any period of suspension of payment by the bank of its liabilities, any notes of the bank payable to bearer on demand, and intended for circulation, or authorizes or is concerned in any such issue or re-issue; and,

(b) **Or without Authority of Treasury Board.**—If, after any such suspension, the bank resumes business without the consent in writing of the curator, hereinbefore provided for, every person who being president, vice-president, director, general manager, manager, clerk or other officer of the bank issues or re-issues, or authorizes or is concerned in the issue or re-issue of any such notes before being thereunto authorized by the Treasury Board; and,

(c) **And Accepting such Notes—Penalty.**—Every person who accepts, receives or takes, or authorizes or is concerned in, the acceptance, receipt or taking of any such notes, knowing the same to have been so issued or re-issued, from the bank, or from such president, vice-president, director, general manager, manager, clerk or other officer of the bank, in payment or part payment, or as security for the payment of any amount due or owing to such person by the bank;

is guilty of an indictable offence, and liable to imprisonment for a term not exceeding seven years, or to a fine not exceeding two thousand dollars, or to both. 63-64 V., c. 26, s. 10.

See sec. 61.

139. (a) Pledging of Notes by Officers of Bank.—Every person who, being the president, vice-president, director, general manager, manager, clerk or other officer of the bank, pledges, assigns, or hypothecates, or authorizes, or is concerned in the pledge, assignment or hypothecation of the notes of the bank; and,

(b) **Accepting—Penalty.**—Every person who accepts, receives or takes, or authorizes or is concerned in the acceptance or receipt or taking of such notes as a pledge, assignment or hypothecation; shall be liable to a fine of not less than four hundred dollars and not more than two thousand dollars, or to imprisonment for not more than two years, or to both. 53 V., c. 31, s. 52.

See sec. 63.

The King vs. Warren, 17 Can. Crim. Cas. 504.

A deposit of a quantity of its own bank notes by a chartered bank to its own credit with a trust company, subject to withdrawal by cheque and without any agreement for the return to the bank of the notes so deposited is not a "pledge, assignment, or hypothecation" by the bank of its own notes, the giving or acceptance of which is an indictable offence under sec. 139 of the Bank Act.

140. (a) Issuing Notes Fraudulently.—Every person who, being the president, vice-president, director, general manager, manager, clerk, or other officer of a bank, with intent to defraud, issues or delivers, or authorizes or is concerned in the issue or delivery of notes of the bank intended for circulation and not then in circulation; and,

(b) **Knowingly Accepting—Penalty.**—Every person who, with knowledge of such intent, accepts, receives or takes, or authorizes or is concerned in the acceptance, receipt or taking of such notes;

shall be guilty of an indictable offence, and liable to imprisonment for a term not exceeding seven years, or to a fine not exceeding two thousand dollars, or to both. 53 V., c. 31, s. 52.

See sec. 63.

Annual Statement and Auditors' Report.

140a. Issue of Annual Statement without Auditors' Report—Penalty.—If any copy of the statement or of the profit and loss account submitted under section 54 of this Act, which has not been signed as required by that section, is issued, circulated or published, or if any copy of such statement is issued, circulated or published without having a copy of the auditors' report attached thereto, the bank, and every director, general manager or other officer of the bank who is knowingly a party to the default shall be liable to a fine not exceeding two hundred and fifty dollars.

Warehouse Receipts, Bills of Lading and other Securities.

141. Bank Acquiring Warehouse Receipt or Bill of Lading—Except in Certain Cases—Penalty.—If any bank, to secure the payment of any bill, note, debt or liability, acquires or holds,—

(a) any warehouse receipt or bill of lading; or,

(b) any instrument such as is by this Act authorized to be taken by the bank to secure money lent,—

(i) to any wholesale purchaser, or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of or dealer in live or dead stock, and the products thereof, upon the security of such products, or of such live or dead stock, or the products thereof;

(ii) to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise upon the security of the goods, wares and merchandise manufactured by such person, or procured for such manufacture; or

(iii) to any farmer upon the security of threshed grain; such bank shall, unless,—

(a) such bill, note, debt or liability is negotiated or contracted at the time of the acquisition by the bank of such warehouse receipt, bill of lading or security; or,

(b) such bill, note, debt or liability is negotiated or contracted upon the written promise or agreement that such ware-

house receipt, bill of lading or security would be given to the bank; or,

(c) the acquisition or holding by the bank of such warehouse receipt, bill of lading or security is otherwise authorized by this Act;

incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

See secs. 86 to 90.

Sec. 76 forbids a bank to do certain things "except as authorized by this Act," and secs. 141, 142, 145 and 146 set out the prohibited acts subject to the exceptions created by the other provisions of the Act.

Clause (c) of sec. 141 protects a bank from liability to a penalty for doing an act which, although not authorized by secs. 86 to 90, is within the powers conferred by the enabling provisions of secs. 76 *et seq.*

142. Non-Compliance with Requirements for Sale—Penalty.—If any debt or liability to the bank is secured by,—

(a) any warehouse receipt or bill of lading; or,

(b) any other security such as is mentioned in the last preceding section;

and is not paid at maturity, such bank shall, if it sells the products or stock, goods, wares and merchandise or grain, covered by such warehouse receipt, bill of lading or security, under the power of sale conferred upon it by this Act, without complying with the provisions to which the exercise of such power of sale is, by this Act, made subject, incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79; 63-64 V., c. 26, s. 18.

143. Making False Statements.—Every person is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who wilfully makes any false statement,—

(a) **In Warehouse Receipt or Bill of Lading.**—In any warehouse receipt or bill of lading given under the authority of this Act to any bank; or,

(b) **In Security upon Products.**—In any instrument given to any bank under the authority of this Act, as security for any loan of money made by the bank to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or of any wholesale purchaser, or shipper of or dealer in live or dead stock or the products thereof, whereby any such products or stock is assigned or transferred to the bank as security for the payment of such loan; or,

(c) **In Security upon Manufactures.**—In any instrument given to any bank under the authority of this Act, as security for any loan of money made by the bank to any person engaged in

business as a wholesale manufacturer of any goods, wares and merchandise, whereby any of the goods, wares and merchandise manufactured by him, or procured for such manufacture, are transferred or assigned to the bank as security for the payment of such loan; or,

(d) **In Security upon Grain.**—In any instrument given to any bank under the authority of this Act as security for any loan of money made by the bank to a farmer whereby any grain is transferred or assigned to the bank as security for the payment of such loan. 53 V., c. 31, s. 75. Am.

The documents mentioned in clause (a) are those upon the security of which a bank may lend money under sec. 86. Clauses (b) and (c) refer to documents which may be taken as security under sec. 88.

Cf. Criminal Code, secs. 425 and 427 (a).

144. Wilfully Disposing of or Withholding Goods Covered by Security.—Every person who, having possession or control of any products or stock, goods, wares and merchandise, or grain, covered by any warehouse receipt or bill of lading or by any such security as in the last preceding section mentioned, and having knowledge of such receipt, bill of lading or security, without the consent of the bank in writing, and before the advance, bill, note, debt or liability thereby secured has been fully paid,—

(a) wilfully alienates or parts with any such products or stock, goods, wares or merchandise, or grain; or,

(b) wilfully withholds from the bank possession of any such products or stock, goods, wares and merchandise, or grain, upon demand, after default in payment of such advance, bill, note, debt or liability;

is guilty of an indictable offence, and liable to imprisonment for a term not exceeding two years. 53 V., c. 31, s. 75; 63-64 V., c. 26, s. 18. Am.

Cf. Criminal Code, secs. 426, 427 (b).

145. (a) Bank not Selling Shares Subject to Privileged Lien.—If any bank having, by virtue of the provisions of this Act, a privileged lien for any debt or liability for any debt to the bank, on the shares of its own capital stock of the debtor or person liable, neglects to sell such shares within twelve months after such debt or liability has accrued and become payable; or,

(b) **Or Selling without Notice—Penalty.**—If any such bank sells any such shares without giving notice to the holder thereof of the intention of the bank to sell the same, by mailing such notice in the post office, post paid, to the last known address of such holder, at least thirty days prior to such sale;

such bank shall incur, for each such offence, a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

See sec. 77 and Cf. notes to sec. 141. See sec. 158.

Prohibited Business.

146. Bank Doing Prohibited Business—Penalty.—If any bank except as authorized by this Act, either directly or indirectly,

(a) deals in the buying or selling or bartering of goods, wares and merchandise, or engages or is engaged in any trade or business whatsoever; or,

(b) purchases, deals in, or lends money or makes advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; or,

(c) lends money or makes advances upon the security, mortgage or hypothecation of any lands, tenements or immovable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise;

such bank shall incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

See sec. 76 and notes to sec. 141. See sec. 158.

146a. Hypothecation of Notes Prohibited.—It shall be an offence against this Act for any director, officer, clerk or servant of the bank to pledge, assign or hypothecate the notes of the bank on behalf of the bank.

146b. Payment of Liabilities of Bank after Suspension.—If a bank suspends payment in specie or Dominion notes of any of its liabilities as they accrue, then, so long as such suspension continues, it shall be an offence against this Act for any director, officer, clerk or servant of the bank who has knowledge of such suspension to pay or cause to be paid to any person any debt or liability of the bank unless with the consent of a curator or liquidator duly appointed.

Returns.

147. Bank not Making Monthly—Penalty.—Every bank which neglects to make up and send to the Minister, within the first twenty days of any month, any monthly return by this Act required to be made up and sent in within the said twenty days, exhibiting the condition of the bank on the last juridical day of the month last preceding, and signed in the manner and by the persons by this Act required, shall incur a penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return. 53 V., c. 31, s. 85. Am.

See secs. 112, 152, 158.

147a. Neglecting Return of Additional Issue of Notes—

Penalty.—Every bank which neglects to make and send to the Minister, within the first thirty days after the last day of the month in which any amount of its notes in excess of the amount of the unimpaired paid-up capital of the bank has been issued or is outstanding, a return showing the amount of its notes in circulation for each juridical day during such month, and signed in the manner and by the persons by this Act required, shall incur a penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return. 7-8 E. VII., c. 7, s. 2. Am.

See secs. 61, 158.

147b. Neglecting Return of Value of Property—Penalty.—

Every bank which neglects to make and send to the Minister during the month of January in each year a return showing in detail the fair market value of its real and immoveable property held under section 79 of this Act shall incur a penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return.

147c. Neglecting Quarterly Return—Penalty.—

Every bank which neglects to make and send to the Minister a quarterly return as of the last juridical day of the months of March, June, September and December in each year, giving such particulars as may be prescribed by regulations made by the Treasury Board of the interest and discount rates charged by the bank, such returns to be made up and sent in within the first thirty days after the respective juridical days aforesaid, and signed by the persons by this Act required, shall incur a penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return.

148. Not Making Returns Required by Minister—Penalty.

—Every bank which neglects to make and send to the Minister, within thirty days from the date of the demand therefor by the Minister, or, if such time is extended by the Minister, within such extended time, not exceeding thirty days, as the Minister may allow, any special return, signed in the manner and by the persons by this Act required, which under the provisions of this Act, the Minister may, for the purpose of affording a full and complete knowledge of the condition of the bank, call for, shall incur a penalty of five hundred dollars for each and every day during which such neglect continues. 53 V., c. 31, s. 86.

See secs. 113, 152, 158.

149. Bank not Making Annual Returns of Drafts and Bills—Penalty.—

Every bank which neglects to transmit or de-

liver to the Minister, within twenty days after the close of any calendar year, a return, signed in the manner and by the persons and setting forth the particulars by this Act required in that behalf, of all certified cheques, drafts or bills of exchange issued by the bank to any person and remaining unpaid for more than five years prior to the date of such return, shall incur a penalty of fifty dollars for each and every day during which such neglect continues. 63-64 V., c. 26, s. 21.

See secs. 114, 152, 158.

150. Not Returning Annual List—Penalty.—Every bank which neglects to transmit or deliver to the Minister, within twenty days after the close of any calendar year, a certified list, as by this Act required, showing.—

(a) the names of the shareholders of the bank on the last day of such calendar year, with their last known post office addresses and descriptions;

(b) the number of shares then held by such shareholders respectively; and,

(c) the amount paid thereon,
shall incur a penalty of fifty dollars for each and every day during which such neglect continues. 53 V., c. 31, s. 87. Am.

See secs. 114, 152, 158.

151. Not Making Annual Returns of Dividends, Balances, Drafts and Bills—Penalty.—Every bank which neglects to transmit or deliver to the Minister, within twenty days after the close of any calendar year, a return, signed in the manner and by the persons by this Act required, of all dividends which have remained unpaid for more than five years, and also of all amounts or balances in respect of which no transactions have taken place, or upon which no interest has been paid, during the five years prior to the date of such return, and also of all certified cheques, drafts or bills of exchange issued by the bank and remaining unpaid for more than five years prior to the date of such return, as required by the provisions of this Act in the several cases respectively mentioned, shall incur a penalty of fifty dollars for each and every day during which such neglect continues.

2. Period of Five Years.—The said term of five years shall, in case of moneys deposited for a fixed period, be reckoned from the date of the termination of such fixed period. 53 V., c. 31, s. 88.

See secs. 114, 152, 158.

152. Date of Posting Return or List.—If any return or list, mentioned in either of the last eight preceding sections, is transmitted by post, the date appearing, by the post office stamp

or mark upon the envelope or wrapper inclosing the return or list received by the Minister, as the date of deposit in the post office of the place at which the chief office of the bank was situated shall be taken *prima facie* for the purpose of any of the said sections, to be the day upon which such return or list was transmitted to the Minister. 53 V., c. 31, ss. 85 and 86; 63-64 V., c. 26, ss. 22. Am.

153. (a) Making False Statement on Account or Return.—

The making of any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the bank, or

(b) Using False Statement—Penalty.—The using of any false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the bank with intent to deceive or mislead any person,

is an indictable offence punishable, unless a greater punishment is in any case by law prescribed therefor, by imprisonment for a term not exceeding five years.

2. Liability of Officers.—Every president, vice-president, director, auditor, general manager or other officer of the bank, or trustee who negligently prepares, signs, approves or concurs in any account, statement, return, report or document respecting the affairs of the bank containing any false or deceptive statement shall be guilty of an indictable offence punishable, unless a greater punishment is in any case by law prescribed therefor, by imprisonment for a term not exceeding three years. 53 V., c. 31, s. 99. Am.

For a full discussion of this section, see Falconbridge on Banking and Bills of Exchange, p. 271.

Drake vs. Bank of Toronto, 9 Grant's Ch. R. 116 (1862).

Seemle: The directors and managers of incorporated banks are *quasi* trustees for the general body of shareholders, and, if any loss should accrue to the bank by their infringing the statute against usury, they would be liable individually to make good the loss to the bank.

In the case of *The Queen vs. Cotte*, 22 L. C. J. 141 (1877), the cashier of La Banque Jacques Cartier was indicted for having unlawfully and wilfully made a wilful, false and deceptive statement in a return respecting the affairs of the bank, and was found guilty. On an appeal to the Court of Queen's Bench for the Province of Quebec, that Court, on the 19th March, 1877, maintained the verdict and held that it is not necessary to allege that the return referred to was one required by law to be made by the accused, or that any use was made by him of such return, or to specify in what particulars the return was false. Nor is it necessary to allege in the indictment that the false statement was made with intent to deceive or mislead.

Rhodes vs. Starnes, 22 L. C. J. 113 (1878).

Reports made and accounts rendered by the directors in the course of their duty, though made and issued to the shareholders only, as to the state of affairs of the company, are considered the representations of the company not only to the shareholders, but to the public, if they are published and circulated by the authority of the directors or a general meeting.

Directors of a company are personally liable for injury caused to third parties by false representations contained in a report of the directors to the shareholders, but the injury must be immediate and not the remote consequence of the representation, and it must appear that the false representation was made with the intent that it should be acted upon by such third persons.

A shareholder cannot claim damages against directors for having been induced to purchase shares by misrepresentation, if he has continued to hold them without objection long after he had knowledge, or full means of knowledge, of the untruth of the representations on which he bought them.

In the case of *Regina vs. Sir Francis Hincks*, 24 L. C. J. 116 (1879), the defendant, the president of the Consolidated Bank of Canada, was indicted for making a wilfully false and deceptive return under 34 Vict., chap. 5, section 62, relating to banks and banking, the falsity of the return consisting in the improper classification of the assets and liabilities, and was tried and convicted on the 20th October 1879. On an appeal to the Court of Queen's Bench for the Province of Quebec, the verdict was quashed and set aside, the court holding that the question as to whether the items: 1st, Sums borrowed by the defendant's bank from other banks, for which deposit receipts were given, classed as "other deposits payable after notice or at a fixed day;" 2nd, Demand notes classed as "bills and notes discounted and current," had been improperly classified was a question of fact for the jury, and not one of law for the court.

In the case of *Molleur vs. Loupret*, L. N. 305 (1885) it was held in the Superior Court for the District of Iberville, Quebec, that the information in the case of making a false return under the Banking Act, 34 Vict., chap. 5, section 62, may be sworn to by a non-shareholder, and even by a citizen who is a debtor of the bank.

Macdonald vs. Bulmer, et al., R. J. Q., 12 S. C. 424 (1897).

The recourse of a drawer and depositor of the bank against the directors of the bank for damages caused by their bad administration being based on the responsibility which the directors have assumed as mandataries, and not on a *délit*, is prescribed by thirty years.

In *Rex vs. Cockburn*, a case tried before the Police Magistrate after the conviction of the president of the Yarmouth Bank for making a false and deceptive statement under sec. 99 of the Act of 1890. The false statement alleged was that certain items which were classed in a monthly return to the government as "current loans" ought to have been included under the head of "overdue debts." The Supreme Court of Nova Scotia set aside the verdict. Weatherbe, C. J., reviewed the evidence and came to the conclusion that there was no evidence that the persons who actually prepared the return in question did so with a fraudulent design or that the classification was wilfully false, and that in any case the president, who had no knowledge of the fraud or falsity, was not liable. Another member of the court came to the same conclusion as the

Chief Justice, and two other members concurred in setting aside the verdict for reasons which are not relevant to the subject *under discussion*.

In *Rex vs. Cockburn*, a case tried before the Police Magistrate for the City of Toronto, judgment was delivered at the close of the case on the 4th of February, 1917. The magistrate found as a fact that the defendant, the president of the Ontario Bank, had no knowledge of the falsity of the returns he signed, and held, as a matter of law, that such knowledge was an essential element of the crime. The only authority cited by the magistrate was the charge to the jury made by Longley, J., in *Rex vs. Lovitt*.

In *re O'Neill*, 5 D. L. R. 646. 19 Can. Cr. Cas. 410, 17 B. C. R. 123.

The fraudulent compilation and filing of bank returns is an extraditable offence, under sub-sec. 1 of sec. 153 of the Bank Act, making any wilful, false, or deceptive statements in such documents indictable.

Calls in the case of Suspension of Payment.

154. (a) Director Refusing to make Calls on Suspension of Bank—Penalty.—If any suspension of payment in full, in specie or Dominion notes, of all or any of the notes or other liabilities of the bank continues for three months after the expiration of the time which, under the provisions of this Act, would constitute the bank insolvent; and,

(b) if no proceedings are taken under any Act for the winding-up of the bank; and,

(c) if any director of the bank refuses to make or enforce, or to concur in the making or enforcing of any call on the shareholders of the bank, to any amount which the directors deem necessary to pay all the debts and liabilities of the bank; such director shall be guilty of an indictable offence, and liable,—

(a) to imprisonment for any term not exceeding two years; and,

(b) personally for any damages suffered by any such default. 53 V., c. 31, s. 92.

See sec. 128.

Undue Preference to the Bank's Creditors.

155. Officers Giving Undue Preference to any Creditor.—Penalty—Damages.—Every person who, being the president, vice-president, director, general manager, manager, or other officer of the bank, willfully gives or concurs in giving to any creditor of the bank any fraudulent, undue or unfair preference over other creditors, by giving security to such creditor, or by changing the nature of his claim, or otherwise howsoever, is guilty of an indictable offence, and liable.—

(a) to imprisonment for a term not exceeding two years; and,

(b) for all damages sustained by any person in consequence of such preference. 53 V., c. 31, s. 97. Am.

*Use of the Title "Bank," etc.***156. Unauthorized Use of Title "Bank," etc.—Offence.—**

Every person using the word "bank," or the words "savings bank," "banking company," "banking house," "banking association," or "banking institution," or any word or words of import equivalent thereto in any foreign language, in a sign or in an advertisement, or in a title to represent or describe his business or any part of his business without being authorized so to do by this Act, or by some other Act in force in that behalf, is guilty of an offence against this Act.

2. Unauthorized Use of Words "Banker," "Private Banker"—Offence.—Every person who uses in a sign or in an advertisement or in a title to represent or describe his business words in a foreign language of import equivalent to the word "banker," or equivalent to the words "private banker," without being authorized so to do by this Act or by some other Act in force in that behalf, is guilty of an offence against this Act. 53 V., c. 31, s. 100. Am.

The section is designed to prevent persons doing business under any name which might mislead the public into the belief that it is doing business with a chartered bank

Sec. 157 provides a penalty for "an offence against this Act."

As to the meaning of "bank" in the Act, see sec. 2.

Penalty for Offence against this Act.

157. Offence against this Act—Penalty.—Every person committing an offence, declared to be an offence against this Act, shall be liable to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding five years, or to both, in the discretion of the court before which the conviction is had. 53 V., c. 31, s. 101.

See secs. 132, 133 and 156, each of which creates an offence under this Act.

PROCEDURE.

158. Penalties Enforceable at Suit of Attorney-General or Minister.—The amount of all penalties imposed upon a bank or person for any violation of this Act shall, unless otherwise provided by this Act, be recoverable and enforceable, with costs, at the suit of His Majesty instituted by the Attorney General of Canada, or by the Minister.

2. Appropriation—Proviso.—Such penalties shall, unless otherwise provided by this Act, belong to the Crown for the public uses of Canada: Provided that the Governor in Council, on the report of the Treasury Board, may direct that any portion of any penalty be remitted, or paid to any person, or applied in any

manner deemed best adapted to attain the objects of this Act, and to secure the due administration thereof. 53 V., c. 31, s. 98. Am.

See secs. 134, 141, 142, 145-151. Cf. sec. 131 (d).

159. R. S., c. 29; 1912, c. 5, Repealed.—Chapter 29 of the Revised Statutes, 1906, and chapter 5 of the statutes of 1912, are repealed.

COMMENCEMENT OF ACT.

160. Commencement of Act.—This Act shall come into force on the first day of July, one thousand nine hundred and thirteen.

SCHEDULE A.

<i>Name of Bank.</i>	<i>Chief Office of Bank.</i>
1. The Bank of Montreal.....	Montreal.
2. The Quebec Bank.....	Quebec.
3. The Bank of Nova Scotia.....	Halifax.
4. The Bank of Toronto.....	Toronto.
5. The Molsons Bank.....	Montreal.
6. La Banque Nationale.....	Quebec.
7. The Merchants Bank of Canada.....	Montreal.
8. La Banque Provinciale du Canada.....	Montreal.
9. The Union Bank of Canada.....	Winnipeg.
10. The Canadian Bank of Commerce.....	Toronto.
11. The Royal Bank of Canada.....	Montreal.
12. The Dominion Bank.....	Toronto.
13. The Bank of Hamilton.....	Hamilton.
14. The Standard Bank of Canada.....	Toronto.
15. La Banque d'Hochelega.....	Montreal.
16. The Bank of Ottawa.....	Ottawa.
17. The Imperial Bank of Canada.....	Toronto.
18. The Sovereign Bank.....	Toronto.
19. The Metropolitan Bank.....	Toronto.
20. The Home Bank of Canada.....	Toronto.
21. The Northern Crown Bank.....	Winnipeg.
22. The Sterling Bank of Canada.....	Toronto.
23. The Bank of Vancouver.....	Vancouver.
24. The Weyburn Security Bank.....	Weyburn.

SCHEDULE B.

An Act to incorporate the—————Bank.

Whereas the persons hereinafter named have by their petition prayed that it be enacted as hereinafter set forth, and it is expedient to grant the prayer of the said petition: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. (*Insert names of those applying for incorporation; the full name, address and description of each director must be given*), together with such persons as become shareholders in the corporation

ly this Act created, are incorporated under the name of (*insert name of bank*) hereinafter called "the Bank."

2. The persons named in section 1 of this Act shall be the provisional directors of the Bank.

3. The capital stock of the Bank shall be——dollars.

4. The chief office of the Bank shall be at——.

5. This Act shall, subject to the provisions of section 16 of The Bank Act, remain in force until the first day of July, in the year one thousand nine hundred and twenty-three.

53 V., c. 31, Sch. B.; 63-64 V., c. 26, s. 45. Am.

SCHEDULE C.

In consideration of an advance of——dollars made by the——Bank to A. B., for which the said Bank holds the following bills or notes: (*describe the bills or notes, if any*), [*or, in consideration of the discounting of the following bills or notes by the——Bank for A. B. (describe the bills or notes)*]; the products of agriculture, the forest, quarry and mine [*or the sea, lakes and rivers, or the live stock or dead stock or the products thereof, or the goods, wares and merchandise or the grain (as the case may be),*] mentioned below are hereby assigned to the said Bank as security for the payment on or before the——day of——of the said advance, together with interest thereon at the rate of——per cent. per annum from the——day of——[*or, of the said bills or notes, or renewals thereof, or substitutions therefor, and interest thereon, or as the case may be*].

This security is given under the provisions of section eighty-eight of The Bank Act, and is subject to the provisions of the said Act.

The said products of agriculture, the forest, quarry and mine [*or the sea, lakes, and rivers, or the live stock or dead stock, or the products thereof, or the goods, wares and merchandise, or the grain (as the case may be)*] are now owned by——and are now in the possession of——, and are free from any mortgage, lien or charge thereon (*or as the case may be*), and are in (*place or places where the goods are*), and are the following (*description of property assigned*).

Dated, etc.

(*N.B.—The bills or notes and the property assigned may be set out in schedules annexed.*)

63-64 V., c. 26, s. 46 and Sch. C.

- Assets.

7. Loans to other banks in Canada, secured, including bills re-discounted.. . . .
8. Deposits made with and balances due from other banks in Canada.. . . .
9. Due from banks and banking correspondents, in the United Kingdom.. . . .
10. Due from banks and banking correspondents, elsewhere than in Canada and the United Kingdom.. . . .
11. Dominion government and provincial government securities.. . . .
12. Canadian municipal securities, and British, foreign and colonial public securities other than Canadian.. . . .
13. Railway and other bonds, debentures, and stocks
14. Call and short (not exceeding thirty days) loans in Canada on stocks, debentures and bonds ..
15. Call and short (not exceeding thirty days) loans elsewhere than in Canada.. . . .
16. Other current loans and discounts in Canada.
17. Other current loans and discounts elsewhere than in Canada.. . . .
18. Loans to the Government of Canada.. . . .
19. Loans to provincial governments.. . . .
20. Loans to cities, towns, municipalities and school districts.. . . .
21. Overdue debts.. . . .
22. Real estate other than bank premises
23. Mortgages on real estate sold by the bank.. . .
24. Bank premises, at not more than cost, less amounts (if any) written off.. . . .
25. Liabilities of customers under letters of credit as per contra.. . . .
26. Other assets not included under the foregoing heads.. . . .

§

Aggregate amount of loans to directors, and firms of which they are partners, \$—————

Average amount of current gold and subsidiary coin held during the month, \$—————

Average amount of Dominion notes held during the month, \$—————

Greatest amount of notes in circulation at any time during the month, \$———

Branch and agency returns included in the foregoing and antedating the last juridical day of the month aforesaid are as follows:—

Branch of Agency	Date of such return
------------------	---------------------

I declare that the above return has been prepared under my directions and is correct according to the books of the bank.

E. F.,

Chief Accountant (*or Acting Chief Accountant, as the case may be*).

We declare that the foregoing return is made up from the books of the bank, and that to the best of our knowledge and belief it is correct, and shows truly and clearly the financial position of the bank; and we further declare that the bank has never, at any time during the period to which the said return relates, held in Dominion notes less than forty per cent. of the cash reserves which it has in Canada.

(Place)——— this——— day of ———, 19——.

A. B.,

President (Vice-President, *or Director acting as President, as the case may be*).

C. D.,

General Manager (*or other principal officer as the case may be*).

63-64 V., c. 26, s. 47 and Sch. D. Am.

SCHEDULE E.

Return of the———Bank———showing the amount of its notes in circulation for each juridical day during the month of———, 19——.

Day of the Month	Paid-up Capital	*Reserve Fund	Deposit Gold Coin and Dominion Notes	Circulation	Excess (if any)

*N.B.—Returns for the months of March to August, inclusive, need not have the Reserve Fund column.

THE BANK ACT.

I declare that the above return has been prepared under my direction and is correct according to the books of the bank.

E. F.,

Chief Accountant (or Acting Chief Accountant, *as the case may be.*)

We declare that the foregoing return is made up from the books of the bank, and that to the best of our knowledge and belief it is correct.

(Place)————— this ——— day of ———, 19——

A. B.,

President (Vice-President, or Director acting as President, *as the case may be.*)

C. D.,

General Manager (or other principal officer *as the case may be.*)

SCHEDULE F.

Return of unpaid dividends, balances and amounts, certified cheques, drafts and bills of exchange of the————— Bank at the close of the calendar year 19——, made in accordance with the provisions of subsections 1 to 5, inclusive, of section 114 of The Bank Act.

.....

I declare that the above return has been prepared under my directions and is correct according to the books of the bank.

E. F.,

Chief Accountant (or Acting Chief Accountant, *as the case may be.*)

We declare that the foregoing return is made up from the books of the bank, and that to the best of our knowledge and belief it is correct.

(Place)————— this ——— day of ———, 19——

A. B.,

President (Vice-President, or Director acting as President, *as the case may be.*)

C. D.,

General Manager (or other principal officer *as the case may be.*)

SCHEDULE G.

In consideration of an advance of _____ dollars made by the _____ Bank to A. B., for which the said Bank holds the following bills or notes: (*describe the bills or notes, if any*) [or, in consideration of the discounting of the following bills or notes by the _____ Bank for A. B.: (*describe the bills or notes*) and inasmuch as the said advance [or the said discounting, *as the case may be*] was made on the representation that seed grain would be purchased with the advance [or proceeds of the discounting, *as the case may be*] and would be sown upon land in the province of _____ situate and being _____ the seed grain purchased and the crop grown from the grain so sown upon the land aforesaid and the grain threshed therefrom are hereby assigned to the said Bank as security for the payment, on or before the _____ day of _____ of the said advance, together with interest at the rate of _____ per cent. per annum from the _____ day of _____ [or of the said bills or notes, or renewals thereof, or substitutions therefor, and interest thereon, *as the case may be*].

This security is given under the provisions of subsections eight to twelve, inclusive, of section eighty-eight of the Bank Act. and is subject to the provisions of the said Act.

Dated at _____

FORM H.

In consideration of an advance of _____ dollars made by the _____ Bank of A.B., for which the said Bank holds the following bills or notes (*describe the bills or notes, if any*) [or, in consideration of the discounting of the following bills or notes by the _____ Bank for A. B. (*describe the bills or notes*)], and, inasmuch as the said advance [or the said discounting, *as the case may be*] is made upon the security of the following live stock: _____ the said live stock are hereby assigned to the said Bank as security for the payment, on or before the _____ day of _____ of the said advance together with interest at the rate of _____ per centum per annum from the _____ day of _____ (or, of the said bills or notes or renewals thereof or substitutions therefor, and interest thereon, *as the case may be*).

This security is given under the provisions of subsections twelve and sixteen of section eighty-eight of the Bank Act, and is subject to the provisions of the said Act.

Dated at _____

Form I.

Public notice is hereby given that security under subsections twelve and sixteen of section eighty-eight of The Bank Act was given on the _____ day of _____ by _____ of _____ to the Bank of _____ for the sum of _____ payable, with interest at the rate of _____ per cent. per annum, on the _____ day of _____ on the security of (*here describe live stock*).

Signed _____ ,

for the Bank of _____



THE WINDING-UP ACT AND AMENDMENTS

ANNOTATED



A TREATISE ON THE LAW RELATING TO
**CANADIAN COMMERCIAL
CORPORATIONS**

With an Appendix containing the Dominion and
Provincial Companies Acts and the Winding-up Act

BY

VICTOR E. MITCHELL, K.C., B.C.L.

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THE REVISED STATUTES OF CANADA, 1906

CHAP. 144.

AN ACT RESPECTING INSOLVENT BANKS, INSURANCE COMPANIES, LOAN COMPANIES, BUILDING SOCIETIES AND TRADE CORPORATIONS

SHORT TITLE.

1. Short Title.—This Act may be cited as “*The Winding-Up Act.*” R. S., c. 129, s. 1.

The Act Intra Vires.

Re Clarke vs. Union Fire Ins. Co. (2), (1887), 14 O. R. 618, 16 A. R. 161; see also 10 O. R. 489.

Held: That the Winding-Up Act, 45 Vic., ch. 23 (D.) is *intra vires* the Dominion Parliament and is in the nature of an insolvency law, and applies to all corporate bodies of the nature mentioned in it all over the Dominion, and that the company in question in this case, though incorporated under a Provincial charter, was subject to its provisions.

Citing: Re Eldorado Union Store Co., 6 Russ. vs. Geld, 514 followed. *Merchants Bank of Halifax v. Gillespie*, 10 S. C. R. 312, distinguished.

Shoolbred vs. Clarke, in re Union Fire Ins. Co. (1890), 17 S. C. R. 265.

Held: A company incorporated by the Legislature of Ontario may be put into compulsory liquidation and wound up under the Dominion Winding-up Act, R. S. C., c. 129. See *cases cited*. See notes to sec. 28.

Allen vs. Hanson, 18 S. C. R. 667 (1890). On appeal from K. B. of Que., 16 Q. L. R. 79; S. C., 13 Legal News, 129.

Held: “Sec. 3 of ‘The Winding-Up Act,’ R. S. C., c. 129, which provides that the Act applies to incorporated trading companies doing business in Canada, wheresoever incorporated is *intra vires* of the Parliament of Canada.

“A Winding-Up Order by a Canadian Court in the matter of a Scotch company incorporated under the Imperial Company’s Acts, doing business in Canada, and having assets and owing debts in Canada, which order was made upon the petition of a Canadian creditor with the consent of the liquidator previously appointed by the Court in Scotland as auxiliary to the Winding-up proceedings there, is a valid order under the said Winding-Up Act of the Dominion.” *Merchants Bank of Halifax vs. Gillespie*, 10 S. C. R., 312 distinguished.

Re Cramp Steel Co., 11 O. W. R. 133. The Company was not insolvent. Its capital stock had been impaired to the extent of twenty-five per cent. The court would not apply the section of the

Dominion Winding-Up Act, and held that the only clauses of that Act applicable to an Ontario corporation are those dealing with insolvency.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires:—

(a) "MINISTER."—"Minister" means Minister of Finance.

(b) "COMPANY."—"Company" includes any corporation subject to the provisions of this Act;

See notes to section 6.

(c) "INSURANCE COMPANY."—"Insurance company" means a company carrying on, either as a mutual or a stock company, the business of insurance, whether life, fire, marine, ocean or inland marine, accident, guarantee or otherwise;

(d) "TRADING COMPANY."—"Trading company" means any company, except a railway or telegraph company, carrying on business, similar to that carried on by apothecaries, auctioneers, bankers, brokers, brickmakers, builders, carpenters, carriers, cattle or sheep salesmen, coach proprietors, dyers, fullers, keepers of inns, taverns, hotels, saloons or coffee houses, lime burners, livery stable keepers, market gardeners, millers, miners, packers, printers, quarrymen, share brokers, ship owners, shipwrights, stock brokers, stock jobbers, victuallers, warehousemen, wharfingers, persons using the trade of merchandise by way of bargaining, exchange, bartering, commissions, consignment or otherwise, in gross or by retail, or by persons who, either for themselves, or as agents or factors for others, seek their living by buying and selling or buying and letting for hire goods or commodities, or by the manufacture, workmanship or the conversion of goods or commodities or trees;

DeLorimier vs. The Can. Gas. & Oil Co., etc., 1908, 34 S. C. (Que.) p. 381, Cooke J.

Held: "The manufacture and sale of gas for lighting is a commercial operation, within the meaning of the Winding-Up Act, R. S. C. 1906, cap. 144, s. 2, and that statute applies to companies formed for that purpose.

Re Anchor Investment Co., Ltd., 7 D. L. R., 915. Trading company. Winding-Up. Insolvency.

See *Re Lake Winnipeg Transportation, etc., Co.* 7 Man. L. R. 255. Cited under section 3 (b).

(e) "COURT."—"Court" means (i) in the Province of Ontario, the Supreme Court of Ontario; (ii) in the Province of Quebec, the Superior Court; (iii) in the Province of Nova Scotia, the Supreme Court; (iv) in the Province of New Brunswick, the Supreme Court; (v) in the Province of Manitoba, Court of King's Bench; (vi) the Province of Prince Edward Island, the Supreme Court; (vii) in the Province of British Columbia, the Supreme Court; (viii) in the Province of Saskatchewan, the Supreme Court (9-10

Edw. VII., ch. 62. sec. 1); (ix) in the Province of Alberta, the Supreme Court (9-10 Edw. VII., ch. 62, sec. 1); (x) in the Northwest Territories, such court or magistrate or other judicial authority as is designated, from time to time, by proclamation of the Governor in Council, published in the *Canada Gazette*; and (xi) in the Yukon Territory, the Territorial Court.

For analogy as to jurisdiction and practice, see *re Poole*. 17. Eq. 268; *Raines' case*, 6 ch. 44 and 120.

(f) "OFFICIAL GAZETTE."—"Official Gazette" means the *Canada Gazette* and the Gazette published under the authority of the Government of the Province where the proceedings or the winding up of the business of the company are carried on, or used as the official means of communication between the Lieutenant-Governor and the people, and if no such Gazette is published, then it means any newspaper published in the Province, which is designated by the court for publishing the notices required by this Act;

(g) "CONTRIBUTORY."—"Contributory" means a person liable to contribute to the assets of a company under this Act, and in all proceedings for determining the persons who are to be deemed contributories and, in all proceedings prior to the final determination of such persons, it includes any person alleged to be a contributory;

See notes to sections 19, 48, 51.

Re Central Bank—Yorke's Case, 15 Ont., R. 625.

Y. in making a deposit on a Government contract, gave a marked cheque on the Central Bank, in which he was a shareholder, and which cheque was subsequently cancelled and a deposit receipt issued by the bank, substituted therefor. Y. gave his note to the bank to cover the amount of the receipt. The bank went into liquidation on December 3, 1887, and on January 29, 1888, Y. having been required by the Government to take up the deposit receipt and replace it with other security, took an assignment of the receipt and notified the bank. On being threatened with a suit on the note, he filed a petition asking for leave to set up the deposit receipt against the note as a set-off.

Held, following *Ings vs. Pres., etc., Bank of P.E.I.*, 11 S. C. R. 265, that Y. as maker of the note to the Bank was a mere debtor and not a contributory, and that although also a shareholder, and so liable as a contributory, he was not a contributory *quoad* the debt which arose out of an independent transaction, and for that reason section 73 of R. S. C., ch. 129 did not apply.

Held, also, that the prohibition in the Act against acquiring debts for the purpose of set-off as administered by the courts, is applicable as if the company was a joint concern, and following *re The Moseley, etc., Coke Co., Barrett's Case*, 4 D. G. J. and S. 756, that the right of set-off virtually arose not by reason of dealings subsequent to the Winding-Up order but of dealings prior thereto, because the engagement was to give security to the satisfaction of the Government, and in taking up the deposit receipt and supplying better security, Y. was only fulfilling that which he was obliged to do by a prior *bona fide* engagement.

Many decisions are cited.

Re The London Speaker Printing Company, Pearce's Case (1889) 16 A. R. 508, at page 513 (Ont.).

P. signed an instrument purporting to be a subscription for shares in a company "proposed to be incorporated" under the Ontario Joint Stock Companies' Letters Patent Act, in which he agreed with the company and the signatories thereto, to take the number of shares set opposite to his name.

B. signed an instrument purporting to be an agreement to accept shares in a company not at the time incorporated.

P. and B. were not incorporators named in the Letters' Patent and no shares were in fact ever allotted to them, but they were entered in the books as shareholders, and notices of meetings and demands for payment of calls were sent to them, and in winding up proceedings they were placed on the list of contributories:—

Held, that there being no company in existence when the instruments in question were signed, they did not constitute binding contracts to take shares so as, without more, to make P. and B. liable as contributories.

The shareholders at the date of the issue of the Letters Patent are those persons only who are named therein, and to whom stock is allotted thereby; and it is these persons and others who may afterwards become shareholders who constitute the company.

In re The Queen City Refining Co., 10 O.R. 264, explained.

(h) "WINDING-UP ORDER."—"Winding-up order" means an order granted by the court under this Act to wind up the business of the company, and includes any order granted by the court to bring within the provisions of this Act any company in liquidation or in process of being wound up.

See sec. 14.

(i) "CAPITAL STOCK."—"Capital Stock" includes a capital stock *de jure* or *de facto*.

(j) "CREDITOR."—"Creditor" includes all persons having any claim against the company present or future, certain, ascertained, or contingent for liquidated or unliquidated damages; and in all proceedings for determining the persons who are to be deemed creditors it shall include any person making any such claim. R. S., c. 129, ss. 2, 33, 56 and 61; 62-63 V., c. 43, s. 5.

See notes to sections 61, 69, 76, 85.

3. Company Deemed Insolvent. When.—A company is deemed insolvent—

(a) If it is unable to pay its debts as they become due;

Harrison vs. Nepisiquit Lumber Co., 11 East. L. R. 314. While insolvency of a company is one ground upon which the Winding-Up Act provides that the company may be wound up, this does not make the Winding-Up Act an "Act relating to Insolvency" within the meaning of the New Brunswick Bills of Sale Act.

Re Harris Maxwell Larder Lake Gold Mining Co. (1910), 1 O. W. N. 984.

Ontario Companies Act, 7 Edw. VII., ch. 34, sec. 199, sub-sec. 3. Petition for Winding-up—Grounds. "Just and equitable."

Allen vs. Hamilton (1910), 1 O. W. N. 659.

Ontario Companies Act. secs. 177, 190, 191. Voluntary Winding-up.

Re Rapid City (1894), 9 Man. L. R. 574, Taylor, C. J.

In supporting a petition for an order against a company under the Winding-Up Act, R. S. C., c. 129, it is not sufficient to show that several demands of payment have been made by the creditor without success, unless a demand in writing has been served on the company in the manner in which process may legally be served on it under section 6 of the Act; nor can the company be deemed to be an insolvent within the meaning of the Act, because an execution has been returned *nulla bona* by a County Court Bailiff.

The provisions of sections 5 and 6 of the Act are exclusive, and a petitioner for a winding-up order must strictly prove the existence of one or more of the circumstances there set forth, or his petition will be dismissed. *Re Qu'Appelle Valley Farming Co.*, 5 M. L. R. 160, followed, see section 3 (g). *In re Flagstaff Mining Co.*, L. R., 20 Eq. 268, and *in re Globe New Patent Iron Co.*, L. R., 20 Eq. 337, distinguished. *In re Agriculturist Ins. Co.*, 1 Mac. and G. 170, referred to.

In re Dominion Antimony Coy., 6 Eastern Law Reporter, 177, 1908 Nova Scotia Supreme Court. Russell J.

Held:—"That a company may be insolvent where none of the conditions in section 3 above exist (i.e., of R. S. C. 1906, cap. 149), that is, if the first condition set out in sub-section (a) is to be restricted to the meaning given to it in section 4. The present company is found to be insolvent, as it cannot meet claims against it as they mature. To determine the question of insolvency it must be assumed that the judgment now outstanding will be sustained, although in appeal, when beyond question it will not have sufficient assets to meet its liabilities."

The judgment cites a translation.

Mackay vs. L'Association Coloniale, 1884, 13 R. L. (Que.) 383, Mathieu J.

Held:—"That section 1 of cap. 23 of the Statutes of 1882 (45 Vict.), which comprised as enacted by the Parliament of Canada, incorporated commercial companies, has the effect of making that statute applicable to such companies, although the words are not to be found in the said section of the statutes as first printed.

"That when a company is insolvent, and that insolvency is alleged in the petition, the creditor who seeks the order for liquidation proceedings is not obliged to allege or to prove that he has made a demand of payment upon the company, conformably to the 10th section of the said statute."

Re Qu'Appelle Valley, etc., Co. (1888) 5 Man. L. R. 160.

(2) Service by a creditor of a demand for payment, in order to establish insolvency upon directors of the company is not sufficient.

Internal Mining Syndicate vs. Stewart (1914), 48 N. S. R., 172.

Nothing but a direct proceeding by the Attorney-General against a company, or winding-up proceedings, can put an end to its existence and even then there would be rights not destroyed.

Re Manitoba Commission Co., Ltd., 2 W. L. R. 1, 22 Man. L. R., 268.

Petitioners must not only allege, but strictly prove, the existence of one or more of the circumstances set out in section 3, which would justify a winding-up order.

In re Ewart Carriage Works, Ltd. (1904), 8 O. L. R. 527. Magee J.

"In a petition for the winding up of the above company, under the Dominion Winding-Up Act, R. S. C. 1886, ch. 129, the petitioner alleged that the company was unable to pay its debts as they became due, within the meaning of section 5 (a) of the above Act, but gave no evidence of the demand in writing, and neglect by the company to pay within sixty days thereafter, as required by section 6."

Held, that the petition must be dismissed, unless amended and fresh evidence given, since section 6 specifies the only way of proving a case under clause (a) of section 5.

This judgment is important, though following the older cases of *re Qu'Appelle Valley Farming Co.*, 5 Man. L. R. 160, and *re Rapid City Farmers' Elevator Co.*, already cited. It is clear therefrom, that the old decision in *McKay vs. L'Association Coloniale*, 13 R. L. 283, is not to be followed, at least in Ontario.

(b) If it calls a meeting of its creditors for the purpose of compounding with them;

Re Lake Winnipeg Transportation, etc., Co., 7 Man. L. R. 255 (1891), Taylor C. J.

Held:—Creditors may shew cause against the making of a winding-up order.

A subsequent execution creditor may file a petition for a winding-up order.

The provisions of 52 Vic., c. 32 (D. 1889), which are not made applicable to proceedings under the Winding-Up Act, do not, in consequence of section 3, apply to cases in which it is sought to wind up a company incorporated in Manitoba.

A company formed for the purpose of "doing the business of lake and river transportation of passengers and goods within the Province of Manitoba by steamer, etc.," may be incorporated by the Lieutenant Governor under Con. Stat. Man., c. 9, s. 226, and is within the meaning of "trading company," as defined by section 3, sub-section (d) of the Winding-Up Act.

Section 5, sub-section (c) (old Act) of the Winding-Up Act, is *intra vires* of the Parliament of Canada.

The non-appearance of a company to oppose a petition for a winding-up order is not an acknowledgement of insolvency sufficient to bring it within section 5, sub-section (d) (old Act). The petitioner, who was president of the company, as well as a large creditor, stated in his affidavit that from his knowledge of said company's affairs he knew it to be unable to pay its debts in full, but gave no comparative statement of its assets and liabilities.

Held:—Not sufficient evidence of insolvency.

Section 5, sub-section (h) (old Act) provides that a company shall be deemed insolvent "if it permits any execution issued against it, under which any of its goods, etc., are seized, levied upon or taken in execution, to remain unsatisfied till within four days of the time fixed by the sheriff or proper officer for the sale thereof, or for fifteen days after such seizure.

Held:—That in computing time under above sub-section the day fixed for the sale is exclusive, and, therefore, where an unsatisfied writ was in the sheriff's hands on the 30th of December, and the sale was fixed for the 3rd of January, it was a writ remaining "unsatisfied till within four days of the time fixed for the sale," and the company was insolvent within the meaning of the Act.

Ex parte Fallon, 5 T. R. 283, and *Williams vs. Burgess*, 12 A. and E. 635, followed. Other cases cited. Section 3 (d).

(c) If it exhibits a statement showing its inability to meet its liabilities;

In re United Canneries, 9 B. C. R. 528.

"The inability to meet liabilities means liabilities to creditors as distinguished from liabilities to shareholders. On the hearing of a petition based on such a statement the statement must be accepted as correct."

See remarks as to company balance sheets.

Re Manitoba Commission Co., Ltd., 22 Man. L. R. 268.

That a company's president threw open the books of the company to an accountant employed by a creditor, and the accountant embodied the result of his examination thereof in a report to the creditors shewing that the company was insolvent, does not bring the company within this sub-section as exhibiting a statement showing its inability to meet its liabilities.

Re Manitoba Commission Co., Ltd., 23 Man. L. R. 268, 2 D. L. R. 1.

That a company's president threw open the books of the company to an accountant employed by a creditor, and the accountant embodied the result of his examination thereof in a report to the creditors shewing that the company was insolvent, does not bring the company within sub-section (c) of section 3, as exhibiting a statement shewing its inability to meet its liabilities. Such a statement is but an expression of the auditor's professional opinion, and is not an acknowledgment by the company of its insolvency.

The acknowledgment of insolvency required by the section must be some formal act of the directors or of the shareholders or of some officer expressly or impliedly authorized to make such an acknowledgment on the company's behalf.

An offer to the company's creditors by the president thereof, to pay a specified sum in full of all liability upon condition that he be reinstated as a member of the Grain Exchange, cannot be construed as an acknowledgment of the company's inability to pay its creditors in full.

(d) If it has otherwise acknowledged its insolvency;

Outlook Hotel Co., 12 W. L. R. 181.

Petition to wind up a company. *Held*, that English rules as to winding up not binding; that the affidavit did not verify the facts in the petition; that additional affidavits should not be allowed owing to the imperfections of the verification affidavit; that there was no proper evidence of insolvency; and that verbal admissions by officers not sufficient evidence of insolvency. Petition dismissed.

Re Manitoba Commission Co., Ltd.

An offer to the company's creditors by the president of a company, to pay a specified sum in full of all liability upon condition that he be reinstated as a member of the Grain Exchange, "cannot be construed as an acknowledgment of the company's inability to pay its creditors in full.

Re Manitoba Commission Co., Ltd. See under 3 (c).

The acknowledgment of insolvency required by section 3 (d) must be some formal act of the directors or of the shareholders or of some officer expressly or impliedly authorized to make such an acknowledgment on the company's behalf.

Re The Peterborough Shovel & Tool Co., Ltd. (1909), 14 O. W.

R. 821; 1 O. W. N. 134. Here an order was made to wind up the company upon its admission of insolvency.

In re Briton Medical & Gen. Life Association, Ltd. (1886), 11 O. R. 478.

C. F. S. applied for an order for the winding up of the B. company under 45 Vic., c. 23 (*d*) and amending Acts, and as evidence of the insolvency of the company shewed that, being entitled to the beneficial interest in a certain policy on the life of her deceased husband, she had demanded payment thereof from the company, but it had been refused; that the suspension of the company had been announced in the papers, and that the manager of the head office in Canada had stated that he was instructed from the head office in England not to make any payments on behalf of the company. It appeared, however, that the policy provided for payment in three months after proof of the death of the insured had been received by the company, while the above demand for payment was made a fortnight after the death, and no other demand had ever been made.

Held:—That the debt was not due when the demand was made, and therefore non-payment was not evidence of insolvency within the meaning of 45 Vic., c. 23, sections 9, 10, 11 (*d*), nor would the fact that the company had not paid claims amount to an acknowledgment of insolvency with section 9 (*d*) of that Act, nor otherwise was there sufficient evidence here of the insolvency of the company, and the petition must be dismissed.

Held, also, that as a matter of pleading, if it had been intended to rely upon the acknowledgment of insolvency, it should have been stated in the petition.

Semble, that even if a general manager of a company positively agreed that any winding-up proceeding that should be necessary should be taken in Ontario rather than elsewhere, this would not bind the company, for the business of the manager is to manage a going concern. It is no part of his duty nor within his power to arrange about putting an end to it.

(The whole question of the constitutionality of 47 Vic., ch. 39 (*d*) was also argued at length, and many cases were cited. The meaning of "chief place of business" was discussed, as also whether a company can have more than one "chief place of business" in the Dominion within the meaning of that Statute. No decision intervened on these points, however, as the case turned upon the sufficiency of the evidence of insolvency).

See, as to powers of directors or manager *re* admissions of insolvent condition, etc. *Hovey vs. Whiting*, 14 S. C. R. 515—"an assignment by the directors of a joint stock company of all the estate and property of the company to trustees for the benefit of creditors is not *ultra vires* of such directors, and does not require special statutory authority or the formal assent of the whole body of shareholders.

Re Qu'Appelle Valley, etc., Co., 5 Man. L. R. 160.

A company does not "acknowledge insolvency by allowing a judgment against it to remain unpaid.

(*e*) If it assigns, removes or disposes of or attempts or is about to assign, remove or dispose of, any of its property, with intent to defraud, defeat or delay its creditors, or any of them;

Re Grundy Stove Co. (1904), Meredith C. J., 7 O. L. R. 252.

To enable a company to be wound up under the Winding-Up

Act, R. S. C. 1886, c. 129, it is not sufficient for the company to appear by counsel and admit insolvency and consent to be wound up, but the facts, as required by the Act, shewing insolvency must be disclosed in the material on which the petition is based.

Re Flagstaff Silver M. Co. (1875), L. R., 20 Eq. 268, and *re Gate Collieries vs. Limeworks Co.* (1883), W. N. 171—distinguished.

Calumet Metals Ltd. vs. Eldredge, 17 D. L. R. 276.

Where a company which is largely indebted and whose stock has been issued as fully paid has ceased active operations for lack of funds and is proceeding against the will of dissentient shareholders and creditors to make over its assets in exchange for the shares of another company, the court may, at the instance of a creditor, properly make a winding-up order under this Act, because of the company being about to dispose of its property with intent to defraud or delay its creditors, or because of its making a sale of such assets without the consent of its creditors and without satisfying their claims while it was unable to meet its liabilities in full. (See also 15 D. L. R. 461, for earlier decision.)

(f) If, with such intent, it has procured its money, goods chattels, lands or property to be seized, levied on or taken, under or by any process of execution:

(g) If it has made any general conveyance or assignment of its property for the benefit of its creditors, or if, being unable to meet its liabilities in full, it makes any sale or conveyance of the whole or the main part of its stock in trade or assets, without the consent of its creditors, or without satisfying their claims;

Re Qu'Appelle Valley, etc., Co., 5 Man. L. R. 160.

Insolvency, held to have arisen from the inability of the company to meet its liabilities in full, and a conveyance of the main part of its assets to another company without the consent of the creditors, and without satisfying their claims. See p. 165 as to sufficiency of affidavits.

Citing Clarke vs. Union Fire Ins. Co., 10 O. R. 489, where the proceedings were had on the application of a shareholder to discharge the winding-up order—notice to company sufficient (1 supra.) See section 19.

(h) If it permits any execution issued against it under which any of its goods, chattels, land or property are seized, levied upon or taken in execution, to remain unsatisfied till within four days of the time fixed by the sheriff or proper officer for the sale thereof, or for fifteen days after such seizure. R. S., c. 129, s. 5.

Re Qu'Appelle Valley, etc., Co. (cited supra).

Per Taylor C. J.:—"That executions have been issued and returned *nulla bona* does not bring the respondents within the letter of clause (h) which speaks only of a company permitting an execution under which a seizure has been made to remain unsatisfied, but certainly it is within the spirit of that clause. In England, under the Companies Act, 1862, s. 80, s.-s. 2, a company cannot be deemed unable to pay its debts unless the judgment creditor petitioning has actually issued execution and such execution has been returned unsatisfied in whole or in part. *In re Flagstaff, etc., Co.*, L. R., 20 Eq. 268, no execution had been issued because the solicitor of the company told the creditor there was no

property of the company on which he could levy, and that it was held relieved the creditor from the necessity of actually levying."

4. A company is deemed to be unable to pay its debts as they become due, whenever a creditor, to whom the company is indebted in a sum exceeding two hundred dollars then due has served on the company, in the manner in which process may legally be served on it in the place where service is made, a demand in writing, requiring the company to pay the sum so due, and the company has, for ninety days, in the case of a bank, and for sixty days in all other cases, next succeeding the service of the demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor. R. S., c. 129, s. 6.

Re Rapid City Farmer's Elevator Co., 9 Man. R. 574. Cited supra, 3 (a).

"It is not sufficient to show that several demands of payment have been made by the creditor without success unless a demand in writing has been served on the company in which process may legally be served on it, under section 6 of the Act" (old Act).

Re McLean, Stinson & Brodie, Ltd. (1910), 17 O. W. R., p. 579; 2 O. W. N. 294.

Rimouski Fire Insurance Co. moved for order to wind up McL., S. & B., Ltd., on ground that the latter company was indebted to petitioners for \$10,000 and were hopelessly insolvent. Stinson, the president, set up as a defence, that while absent in England, his fellow directors had conspired to ruin the company and intended to transfer valuable contracts to one of the directors. Stinson took out an order to examine one Audet, the manager of the Rimouski Co., but he refused to answer certain questions. Stinson moved to commit Audet for refusing to answer, and the Rimouski Co. moved to set aside the motion to commit Audet, and the order for his examination. *Riddell J., held*, that the motion to set aside the appointment for examination should be refused with costs. Witness to pay costs of this motion forthwith. Other motions stayed until December 9th. No order made staying examination.

Re Calumet Metals Co., 14 Que. P. R. 264.

The allegation in a petition for an order to wind up a company that the latter is insolvent and unable to pay its debts as they become due does not compel the petitioners to establish such incapacity to pay by the mode indicated in section 4 of the Winding-Up Act, that is, by serving a demand for payment on the company at least sixty days before the presentation of the petition. Section 4 is not exclusive, and the petitioner may prove the incapacity as he would any other fact.

McKinstry vs. Irwin, 21 Que. K. B. 139.

The voluntary winding up of an industrial company, though under a judicial order, raises no presumption of insolvency that deprives it of the benefit of term for the discharge of its obligations.

Alex. Bremner, Ltd. vs. Dom. Floor & Wall Tile Co. (1915), 17 Que. P. R. 278.

Service of a petition for the winding up of a company is equivalent to the service of a demand in writing for the payment of the amount due the petitioner, and the expiry of sixty days from the said service, coupled with the neglect of the company to pay, secure or compound the debt, gives the court the right to consider it sufficiently proved that the company is unable to pay its debts as they fall due. If there is a general allegation of insolvency, the petitioner may establish such insolvency by other evidence than the service of a demand more than sixty days previously.

In re Abbott-Mitchell Iron & Steel Co. (1901), 2 O. L. R. 143, Meredith C. J.

"Service of the specially indorsed writ of summons in an action against the company to recover the amount of a creditor's claim is not a sufficient demand in writing, within the meaning of section 6 of the Act, R. S. C. 1886, ch. 129, to serve as the foundation for a petition by the creditor for a winding-up order.

"*Seem*, that, as section 8 of the Act requires the petitioner to give four days' notice of his application, effect could not be given to a ground of which the company had not that notice."

Re Briton Medical, 11 O. R. 478.

See section 3 (*d*). Such a demand does not avail if the debt was not due at the time of the demand.

In re Ewart Carriage Works (1904), 8 O. L. R. 527. Magee J.

"Section 4 specifies the only way of proving a case under clause (*a*) of section 3. Therefore, where the petitioner alleged that the company was unable to pay its debts as they became due, but gave no evidence of the demand in writing and neglect by the company to pay within sixty days thereafter. *Held*, that the petition must be dismissed, unless amended and fresh evidence given."

Cardiff vs. Norton (1867), 2 Ch. App. Cas. (Eng.) 405.

A winding-up order under the Joint Stock Companies Act, 1856, is not invalid because founded on neglect to pay on a demand of the petitioning creditor in excess of what was actually due him.

Re Imperial Hydropathic Hotel Co., Ltd., 49 L. T. (N.S.), 147, 1882, Court of Appeals.

Held, that the petitioner had not waived his statutory demand by delay beyond the three weeks—(in our Act, ninety and sixty days, as the case may be).

Nor had the petitioner waived his demand by receiving interest on his debt in the meantime.

Held, also, that the company had no reasonable excuse for not paying the debt, and that though, if the debt was *bonâ fide* disputed, a winding-up petition was not the way to enforce it, the present petitioner might reasonably think he was being trifled with, and was entitled to succeed on his petition as a means of enforcing payment, unless the debt was paid.

This is an interesting and most carefully considered judgment,

See as to *bonâ fide* dispute of debt. *Re London and Paris Banking Corporation*, L. Rep., 19 Eq. 444.

The Catholic Publishing & Bookselling Coy., Ltd., 2 DeG. J. and S. 116 (1864).

Held:—An order for winding up a company on the application of a creditor, on the ground that the company has not paid the petitioner his debt within twenty-one days after notice requiring payment, will not be made unless the twenty-one days have elapsed before the petition is presented.

Per the Lord Justice Turner. Attempts to enforce, by means of a winding up petition, the payment of a debt, the liability to which is *bonâ fide* disputed by the company, are not to be encouraged, and *seem*, in such a case the petition ought to be ordered to stand over till the debt is established.

See cases cited.

In re London and Paris Banking Corporation, Ltd. (1874), L. R., 19 Eq. 444.

The omission of a joint stock company to comply with a sta-

tutory notice requiring payment of a debt, served by a creditor on the company, is not "neglect" within the meaning of that subsection, unless there is no reasonable cause for the omission.

A creditor who has served such a notice is not entitled to a winding-up order if the company *bonâ fide* dispute the debt, and there is no evidence of the insolvency of the company (other than the non-compliance with the notice), and insolvency is denied on the part of the company.

Where a creditor whose debt was disputed served such a notice, and at the expiration of three weeks filed a petition to wind up the company under circumstances which, in the opinion of the court, shewed that the object of the petition was not to obtain a winding-up order, but to put pressure on the company:—

Held, that the petition must be dismissed with costs.

Re Brighton Club vs. Norfolk Hotel Co., 35 Beav. 204. *In re Catholic Publishing & Bookselling Co.* (*supra*) approved;

Ex parte Rhydydefed Colliery Coy., 3 DeG. and J. 80 distinguished.

Sec., however, *re Imperial Hydropathic Hotel Co. supra*, where it would appear that "neglect" to act upon such a notice was considered conclusive and entitled the creditor to proceed on his petition.

Re Rapid City Farmers' Elevator Co. Taylor C. J. (1895), 10 Man. R. 681.

In supporting a petition under the Winding-Up Act against a company by a person claiming to be a creditor and relying upon a service of the notice under section 12 (45 Vic., c. 23, and, therefore, the Act), it is necessary to show that the petitioner was a creditor of the company at the date of service of the demand, and it will not be sufficient to prove that the judgment was recovered before the date of the service without showing also that the petitioning creditor had acquired the judgment before such date.

No special form for the demand of payment is specified or required. A precise claim, demanding immediate settlement, and naming the amount due, will suffice.

5. Commencement of winding up.—The winding up of the business of a company shall be deemed to commence at the time of the service of the notice of presentation of the petition for winding up. R. S., c. 129, s. 7.

Fuchs vs. Hamilton Tribune Co. (1884), 10 Ont. P. R. 409. Boyd J.

The winding up of a company commences from the time of the service of the notice under section 12 (45 Vic., c. 23, and, therefore, under section 69 a landlord's claim to be paid preferentially for overdue rent after such service is invalid.

An undertaking by a provisional liquidator in possession to pay such a claim is, by sections 20 and 21, *void*, unless the permission of the court is first obtained.

See *re Oak Pitt Colliery Co.*, 21 Ch. D. 329, for a collection of cases.

Re Bastow. L. R., 4 Eq. 681, distinguished. See notes to sections 13, 20, etc.

6. Application.—This Act applies to all corporations incorporated by or under the authority of an Act of the Parliament of Canada, or by or under the authority of any Act of the late pro-

vince of Canada, or of the province of Nova Scotia, New Brunswick, British Columbia or Prince Edward Island, and whose incorporation and the affairs whereof are subject to the legislative authority of the Parliament of Canada; and also to incorporated banks, savings banks, incorporated insurance companies, loan companies having borrowing powers, building societies having a capital stock, and incorporated trading companies doing business in Canada wheresoever incorporated and,—

(a) which are insolvent; or

(b) which are in liquidation or in process of being wound up, and, on petition by any of their shareholders or creditors, assignees or liquidators ask to be brought under the provisions of this Act. R. S., c. 129, s. 3; 52 V., c. 32, s. 3.

Allen vs. Hanson, 18 S. C. R., 667 (see section 1).

Merchants Bank vs. Gillespie, 10 S. C. R., 312.

Section 6 is *intra vires* of the Parliament of Canada, and applies to all trading companies doing business in Canada.

As to section (b):—

Re Cramp Steel Co. (1908), 11 O. W. R. 133. Mabee J.

The company was incorporated under Ontario law. Its capital had been impaired, though it had no creditors. Held:—"The only clauses of the Dominion Act that can be made to apply to an Ontario corporation are those dealing with insolvency."

Re Union Fire Ins. Co., 14 O. R. 618, 16 A. R. 161, 17 S. C. R. 265, cited and approved.

Allen vs. Hanson. See section 1.

As to foreign company and power under the Act to affect operations of a company in England.

And see *re Matheson Bros.*, L. R., 27 Ch. D. 225, at p. 228; and *re Commercial Bank of South Australia*, L. R., 33 Ch. Div. 174 at p. 178.

Ritchie C. J., in *Allen vs. Hanson*, stated that as regards foreign companies the Act is designed only to protect the interests of creditors and control the property of the company in Canada.

Re Iron Clay Brick Mfg. Co., Turner's case (1890), 19, O. R. 113.

Semble, notwithstanding the Act 52 V., c. 32 (d), amending the Dominion Winding-Up Act, the Ontario Winding-Up Act, R. S. O. (1887), c. 183, does not apply to a company incorporated in Ontario where application to wind up is made on the ground of insolvency, because local legislatures have no jurisdiction in matters of bankruptcy or insolvency.

The Ontario Act applies in cases of voluntary liquidation.

Beauvais vs. British & Canadian Lead Co., 31 Que. S. C. 289.

A receiver appointed by an order of the High Court of Justice in England to an insolvent company incorporated in that country, but owning real estate in this province, has no status or quality in which he can make an opposition to a seizure of such real estate in execution of a judgment rendered against the company.

Re Cramp Steel Co., Ltd., 16 O. L. R. 230. Mabee, J.

The provisions of the Dominion Winding-Up Act (R. S. C. 1906, ch. 144), do not apply to a company incorporated under the Ontario Companies Act unless such company is shown to be insolvent.

Dostaler vs. Mutual Fire Insurance Company of Canada (1909), 11 Que. P. R. 303. Bruneau, J.

Held:—All the articles of the Civil Code and of the Code of Civil Procedure relative to abandonment of property and not incompatible with the Provincial (Quebec) Statute, 8 Edw. VII., c. 69, apply to the liquidation of mutual fire insurance companies.

Scott vs. Hyde, 18 Que. K. B., 138.

The general rule that a winding-up order made against a company, after appearance and contestation by it, is conclusive against the shareholders, does not apply where the ground taken is that the company was not subject to the Winding-Up Act or that the petition for the order had not been served upon it, and was a fraudulent abuse of the process of the court.

2. The Act applies to a foreign company which has done business in Canada, although the same has been discontinued for a period of five or six years, if there be unsatisfied obligations arising therefrom.

3. A foreign company doing business in Canada is subject to the Winding-Up Act, and the Superior Court has jurisdiction and power to make a winding-up order against it thereunder, although no liquidation proceedings are taken against it at its domicile; and the correct view is that, in its application, the Act is to be construed, not strictly but liberally.

In re Nelson Ford Lumber Coy. (1908), 1 Sask. L. R. 503, 9 W. L. R. 438. Wetmore C. J.

"An application was made under the Dominion Winding-Up Act, to wind up a company incorporated under the Provisions of the Northwest Territories Companies Ordinance, cap. 20, 1901. Evidence was adduced for the purpose of showing that the company was insolvent, but this was largely dependent upon hearsay."

Held:—That the Dominion Winding-Up Act (c. 144, R. S. C. 1906) applies only to corporations incorporated under provincial legislation when it is shewn that such corporations are insolvent, in liquidation, or in process of being wound up, and as it was not shewn that the corporation in question was in liquidation or being wound up and as there was no sufficient evidence to establish insolvency, the Dominion Act did not apply.

Re Padstow Total Loss vs. Collision Assurance Co. (1882) L. R., 20 Ch. 137.

This company in its formation and membership violated the law governing its formation. The court, therefore, could not recognize it as having any legal existence, and the order for winding it up must be discharged.

This is an interesting case, referring to numerous decisions. See also:—

Oakes vs. Turquand et al. (1867), L. R., 2 H. L. 325.

In re The Montreal City Club, in liquidation, and Stevenson, liquidator, and Ferguson contesting, 8 Que. S. C. 527.

Held:—"The provisions of the Dominion Winding-Up Act, R. S. C., ch. 129, do not apply to social clubs incorporated under article 5487 *et seq.* R. S. Q., the Winding-Up Act applying to incorporated trading companies and not to civil corporations such as social clubs.

Retroactive—

Wyld vs. Hamilton Mutual Insurance Co. (1884), 6 Ont. R. 118. Boyd, C. J.

Held, "the Act is retroactive in the sense of applying to companies which have become insolvent before the date thereof."

See decisions and authorities cited.

Re Union Fire Insurance Company (1886), 13 Ont. A. R. 268.

McKinstry vs. Irwin, 21 Que. K. B. 139.

The voluntary winding up of an industrial company, though under a judicial order, raises no presumption of insolvency that deprives it of the benefit of term for the discharge of its obligations.

"Doing business in Canada."

Re Ontario Forge & Bolt Company, Ltd. (1894), 25 Ont. R. Street, J.

A company incorporated under an Act of the Province of Ontario, and carrying on business in Ontario, is "doing business in Canada" within the meaning of section 3 of the original Act.

Pontbriand Co. vs. Cosky, 14 Que. P. R. 19.

The Winding-Up Act (R. S. C. [1906], ch. 144) applies to the voluntary, as well as compulsory, liquidation of an insolvent company.

Re Breakwater Co., 22 D. L. R. 294; 33 O. L. R. 65.

The Winding-Up Act applies to all companies carrying on business in Canada, and includes a foreign corporation which is being liquidated in the country of its origin; and the assets in the hands of the Canadian liquidator are to be distributed *pro rata* amongst all creditors of the company ranking *pari passu*, without preference to the claims of creditors residing in Canada.

McNeil vs. Reliance Mutual Fire Insurance Co. (1879), 26 Grant's Ch. R. 567.

The object of the Legislature in creating the Insolvent Court, is to administer the estates of insolvents, and this court (of equity) will not, unless in a very exceptional case, interfere with the jurisdiction thus created. Therefore where a bill was filed for the purpose of winding up the affairs of an insolvent insurance company, a demurrer for want of equity was allowed, although the bill prayed, amongst other things for the appointment of a receiver to get in the assets and wind up the affairs of the company. A court of equity has, in such case, no jurisdiction to make such an order.

Elsewhere we have cited *Re Montreal City Club* (1895), 8 R. J. Que. S. C. 527, where it was held that the Winding-Up Act does not apply to social clubs. See also:

Re British Athenaeum Club, 43 Ch. D. 236.

In this connection, however, Messrs. Parker & Clarke, in their work on Company Law and the Winding-Up Act (1909, Canada Law Book Company, Toronto), remark:—

"In the part of the section introduced in the last revision the term 'corporation' is used and not 'trading companies.' It may, therefore, be that clubs and similar corporations incorporated under the authority of the Acts referred to in the first seven lines of the section (down to the word 'Canada') are within the Act, and may be wound up."

Companies incorporated by Act of the Legislature, Federal or Provincial, are subject to the Winding-Up Act, as, see for example, *Re Brentford and Isleworth Tramways Company* (1884), 26 C. D. 527. Cases cited, as also are companies, owing their existence to a Royal Charter, as, *re Bank of South Australia* (1895), 1 Ch. 573. *Re St. Neot's Water Co.*, 22 L. T. L. R. 478 (1906), citing and distinguishing several cases.

Foreign companies doing business in Canada come also under the Act.

Allen vs. Hanson, supra.

Re Mercantile Bank of Australia (1892), 2 Ch. D. 204.

Re Queensland Mercantile Agency (1888), 58 L. T. 878.

Early in the year 1877 the Australian Investment, a Scotch company, office in Edinburgh, brought an action in Scotland against the Queensland Mercantile Agency Co., an Australian company, office in Brisbane, claiming to recover from the Queensland Company money which the Scotch company had sent out for investment, and which had been, as the Scotch company alleged, lost by fraudulent investment. For the purpose of founding jurisdiction, arrestment had been made in Scotland of unpaid capital on shares of the Queensland company held in Scotland. The pleadings in the Scotch courts were closed in May, 1887.

In October, 1887, an order to wind up the Queensland company was made by the court in Queensland, and shortly afterward an order to wind up the same company was made in England, and directed to be ancillary to the order of the Colonial Court. The English liquidator moved to stay the proceedings in the Scotch action, and the Scotch company made a cross motion that their action might be allowed to proceed, notwithstanding the winding up.

Held, that it was more convenient that the matter should be investigated in the liquidation than in the Scotch action, and that if the Australian company had gained any priority of security by virtue of the process of arrestment, it could be preserved in the winding up. There was, therefore, no reason for allowing the Scotch proceedings to continue, and they must be stayed.

Re Cramp Steel Co., Ltd., 1908, 16 O. L. R., 230.

The provisions of the Dominion Winding-Up Act do not apply to a company incorporated under the Ontario Companies Act, unless such company is shown to be insolvent.

7. Certain Corporations Excepted.—This Act does not apply to building societies which have not a capital stock, or to railway or telegraph companies. R. S., c. 129, s. 3; 52 V., c. 32 s. 3.

It has been decided that the Act is *intra vires* the Dominion Parliament, and that it applies to an insurance company incorporated by a provincial legislature. *Re Clarke vs. The Union Fire Insurance Company* (1887), (2), 14 O. R. 619; affirmed on appeal (Burton J. A., dissenting), (1889), 16 Ont. A. R. 161; see also *Re Eldorado Union Store Company*, 6 Russ & Geld. 514. But the Act does not apply to a foreign company, i.e., one domiciled in another country. *Merchants Bank of Halifax vs. Gillespie*, 10 S. C. R., 512.

A winding-up order was made in the case of a company incorporated in England, but carrying on business in Nova Scotia, and having its principal place of business in that province. On appeal it was held by the Supreme Court of Canada (reversing the Supreme Court of N. S.) that the Act (45 Vic., 23) was not applicable to such a company. It was considered that the statute should be construed as not affecting a foreign company, as otherwise it would be *ultra vires*, and to that extent void. *Merchants Bank of Halifax vs. Gillespie, Moffatt & Co.* (1884), 10 S. C. R. 312.

In a similar case in Ontario (argued after the decision was rendered in the above case, but before the same was reported), Proudfoot, J., declined to follow the judgment of the Supreme Court, and to set aside a winding-up order granted by Ferguson, J., respecting a foreign company. His reasons for refusing to do so

were partly that the conclusions as to the *ultra vires* of any such enactment were only *obiter dicta* of two of the judges of the Supreme Court (Strong & Henry, J. J.), but mainly because he was of the opinion that he had no power to set aside the order, and that that could only be done by a divisional court. *In re Lake Superior Native Copper Co., Ltd., re Plummer* (1885), 9 O. R. 277, at pp. 280-1.

In England the provisions of the Companies' Act, 1881, relating to winding up, have been held applicable to a company formed in India, incorporated under Indian law, and having its principal place of business there, but also having a branch office in England. *In re Commercial Bank of India*, L. R., 6 Eq. 517. But otherwise as regards a foreign company carrying on business in England through agents, but having no branch office of its own in that country. *In re Lloyd Generale Italiano* (1885), L. R., 29 C. D. 219. In *Wyld vs. Hamilton Mutual Insurance Company* (1883), 6 O. R. 118, it was held that by virtue of this section (then section 3, of 45 Vic., c. 23), the Act was retroactive in so far as that it applied to companies which had become insolvent before the date of the Act.

PART I.

GENERAL.

LIMITATION OF PART.

8. Subject to Part II.—In the case of a bank other than a savings bank, the provisions of this part are subject to the provisions of Part II. of this Act. R. S., c. 129, ss. 4 and 97.

In re Bank of Liverpool. 14 S. C. R. 650.

The provisions of sections 149 to 159 must first be complied with, before a bank can be wound up under this Act.

9. Subject to Part III.—In the case of life insurance companies, and of insurance companies doing life insurance and other insurance in so far as relates to the life insurance business of such companies the provisions of this Part are subject to the provisions of Part III. of this Act. R. S., c. 129, ss. 4 and 105.

10. Subject to Part IV.—In the case of insurance companies other than life insurance companies and of insurance companies doing life insurance and other insurance, in so far as relates to such other insurance, the provisions of this part are subject to the provisions of Part IV. of this Act. R. S., c. 129, ss. 4 and 115.

WINDING-UP ORDER.

11. In what Cases Winding-Up Order may be Made.—The court may make a winding-up order:—

(a) Where the period, if any, fixed for the duration of the company by the Act, charter or instrument of incorporation has expired; or where the event, if any, has occurred, upon the occurrence of which it is provided by the Act or charter or instrument of incorporation that the company is to be dissolved;

(b) Where the company at a special meeting of shareholders called for the purpose has passed a resolution requiring the company to be wound up;

Re The Colonial Investment Co. of Winnipeg. 14 D. L. R. 563, 25 W. L. R. 843.

A building loan and investment company, organized under a Manitoba Act, and which is in process of being voluntarily wound up under a provincial law pursuant to a resolution adopted by its shareholders at a special meeting, may, under section 11 (b) of the Dominion Winding-Up Act, be ordered to be wound up under the provisions of the latter Act on the petition of any shareholder.

Re The Colonial Investment Co. of Winnipeg. 14 D. L. R. 563, 25 W. L. R. 843.

Whether a winding-up order will be made under the Dominion Winding-Up Act, on the petition of any of the shareholders of a provincial company which is in process of winding up under a provincial law rests in the discretion of the court, and will not be made *ex debito justitiae* merely because the petitioners bring themselves within the terms of the Dominion Act.

Re Installations, Ltd., 14 D. L. R. 679.

A winding up order is authorized under section 11 on proof of an execution remaining unsatisfied against the company for fifteen days after its goods were levied upon, although there may not have been a default of sixty days following the demand for payment, under section 4; the latter section does not affect clause (h) of section 3 as to insolvency presumed from executions remaining unsatisfied.

Red Deer Mill & Elevator Co. vs. Hall, 1 Alta. L. R.

Semble, that the mere fact that a company have large liabilities, and have decided that in view of them they are unable to carry on their business, is not proof of "insolvency."—Where no regular meeting of directors was held to proceed to convene an extraordinary meeting of the company to consider a resolution for winding up, but it was shown that the requisite number of shareholders had joined in the requisition pursuant to section 118 of the Companies Ordinance, among them being all the directors, all of whom subsequently signed an indorsement directing the secretary—himself a director—to call the meeting.—*Held*, that the want of a regular meeting of the directors was a mere irregularity, and did not invalidate the meeting of shareholders subsequently held in pursuance of notice given by the secretary, at which the winding-up resolution was passed. *Re Hayercraft Gold Reduction Co.*, 69 L. J., Ch. 497, and *re State of Wyoming Syndicate* (1901), 2 Ch. 431, distinguished. *Southern Counties Deposit Bank vs. Rider*, 73 L. T. R. 374, followed.

(c) When the company is insolvent;

See section 3 and notes.

Re Cramp Steel Co., 11 O. W. R. 133, Mabee, J. See section 6 and notes.

Re Olympia Co., Ltd., 9 W. W. R. 263; 32 W. L. R. 539.

Where a joint stock company has made an assignment for the benefit of its creditors, a creditor of the company is not entitled as a matter of course to a winding-up order. The Assignment Act applies to companies. (Affirmed in 25 D. L. R. 620).

Re Olympia Co. Ltd., 25 D. L. R. 620, 9 W. W. R. 875.

A creditor who consents to the winding up of a provincial company under a Provincial Assignment Act cannot afterwards invoke the Dominion Statute to wind up the company under the Winding-Up Act, R. S. C. 1906, ch. 144, nor will the court make such order *ex debito justitiæ*. Even where insolvency is established, for the purpose of prosecuting claims which would not prove of material benefit and could be as effectively done by the official assignee under the provincial statute, particularly where such order is opposed by a majority of the creditors. (*Re Strathy Wire Fence Co.*, 8 O. L. R. 186, applied).

(d) When the capital stock of the company is impaired to the extent of twenty-five per cent. thereof, and when it is shown to the satisfaction of the court that the lost capital will not likely be restored within one year; or

Re Cramp Steel Co. (supra).

The sub-section governs in case of companies incorporated by Dominion charter.

Parker and Clarke, p. 358:—"It would appear from this decision that the order can be made in respect to an Ontario corporation under sub-section (c) only.

(e) When the court is of opinion that for any other reason it is just and equitable that the company should be wound up. 52 V., c. 32, s. 4.

Re Hamilton Ideal Mfg. Co., 34 O. L. R. 66; 23 D. L. R. 640.

It is the duty of the court, in the proper exercise of its discretion, to make an order for the winding up of a company, under section 11, where it appears that most of its assets had been disposed of and that no active business was being carried on, or that it was being operated at a loss, and the principal person opposing the petition to its being wound up was its president, who was receiving a salary payable out of its assets.

Re Man. Commission Co., Ltd., 9 D. L. R. 436.

The general rule that an unpaid creditor of a company is entitled to a winding-up order as a matter of right, is subject to the exception (among others) that it will not be granted where there are no assets and the petitioning creditor would get nothing by the order; if, however, there is anything, though it is impossible to say whether it is of any value, the order should be granted.

Re The Colonial Investment Co. of Winnipeg, 14 D. L. R. 563, 25 W. L. R. 843.

The provisions of section 11 are not restricted in their operation to companies organized under the Dominion Companies Act, but apply as well to provincial building societies having a capital stock and organized under provincial laws, if in liquidation or in process of being wound up under a resolution adopted by its shareholders; and a winding up order may be made in a proper case on petition of a shareholder asking that the society be brought under the provisions of the Winding-Up Act (Can.)

Re The Colonial Investment Co. of Winnipeg, 14 D. L. R. 563, 25 W. L. R. 843.

An order for the winding up of a provincial company at the instance of a shareholder may be made under section 11 (e), as to

a company to which the Act applies, notwithstanding the pendency of a voluntary winding-up proceeding under a provincial Act, where ample reason is shewn for fearing that the interests of the company at large, and of the shareholders in particular, are likely to be insufficiently protected in the voluntary proceeding and the court is, in consequence, of opinion that it is just and equitable to make the order.

See section 12.

The words of the sub-section are not *ejusdem generis* with what has gone before:—

In re Langham Skating Co., L. R., 5 C. D. 669.

Re Sailing Ship "Kentmere" Company (1897), W. N. 58.

Ex parte Barnes. 1896, A. C. 146.

The court has no jurisdiction to direct any person to be publicly examined under section 8, sub-section 3 of the Companies (Winding-Up) Act, 1890, unless the official receiver has made a "further report" under sub-section 2 from which it appears that in his opinion a fraud has been committed by a person in the promotion or formation of the company, or by a director or other officer of the company in relation to the company since its formation.

And the power to direct a public examination of the persons mentioned in sub-section 3 does not apply to any one of them against whom a *prima facie* case of fraud has not been disclosed by the "further report" of the official receiver.

See cases cited.

In re European Life Assurance Soc. (1896), L. R., 9 Eq. 123.

Inability of a company to pay its debts under section 80 of the Companies Act, 1862, is an inability to pay debts actually due, for which a creditor could claim immediate payment.

The court will not order a company to be wound up under the "just and equitable" clause by reason of any liabilities not immediately payable unless it is reasonably certain that the existing and probable assets will be insufficient to meet the existing liabilities, and will not in any case take into account the possible liabilities or profits which may accrue in respect of future business.

In re Haven Gold Mining Company (1881), L. R., 20 C. D. 151.

"Where the court is satisfied that the subject matter of the business for which a company was formed has substantially ceased to exist, it will make an order for winding up the company, although the large majority of the shareholders desire to carry on the company.

"Therefore, where a company was established for working a gold mine in New Zealand, and it turned out that the company had no title to the mine, and had no prospect of obtaining possession of it, except as to a small portion for a few months, a winding up order was made, although there were general words in the memorandum of association enabling the company to purchase and work other mines in New Zealand, and the large majority of the shareholders wished to continue the company.

"But, *semble*, the mere fact of there having been fraud in the promotion of the company, or fraudulent misrepresentation in the prospectus, would not, in itself, be sufficient to induce the court to make a winding-up order, because the majority of the shareholders would have power at a general meeting to waive the fraud and confirm the transactions affected by it."

This decision was followed and applied in 1897.

Re The Coolgardie Consolidated Mines, Ltd., 76 L. T. 269.

"Where a company puts in the forefront of its memorandum of association a special object, as to which definite information can be obtained by intending subscribers for shares, and the subsequent clauses of the memorandum contain a list of general objects, the reasonable mode of construing the memorandum in ordinary cases is, say that the object first stated is the paramount object of the company, and that the other objects are ancillary and subservient to that object.

"Where, therefore, the paramount object of a company was to work gold mines in the colony of West Australia, the promoters of the company having in view one particular mine near Coolgardie in that colony, although the memorandum of association specified as one of the objects of the company to acquire and work mines 'in West Australia or elsewhere,' the acquiring and working a mine in the colony of Victoria was held not to be a carrying out of the objects of the company, and the real object for which the company was formed having therefore failed, and its *substratum* having gone, an order for winding up the company was good."

In re German Date Coffee Co. (1882), L. R., 20 C. D. 169.

"The memorandum of association of a company stated that it was formed for working a German patent which had been or would be granted for manufacturing coffee from dates, and also for obtaining other patents for improvements and extensions of the said inventions or any modifications thereof or incident thereto; and to acquire or purchase any other inventions for similar purposes, and to import and export all descriptions of produce for the purpose of food, and to acquire or lease buildings either in connection with the above-mentioned purposes or otherwise, for the purposes of the company.

"The intended German patent was never granted, but the company purchased a Swedish patent, and also established works in Hamburg, where they made and sold coffee made from dates without a patent. Many of the shareholders withdrew from the company on ascertaining that the German patent could not be obtained; but the large majority of those who remained desired to continue the company, which was solvent. A petition having been presented by two shareholders:—

"*Held*, that the *substratum of the company had failed*, and it was impossible to carry out the objects for which it was formed; and, therefore, that it was *just and equitable* that the company should be wound up, although the petition was presented within a year from its incorporation.

"The effect of general words describing the objects of a company in the memorandum of association considered."

See also: Baring vs. Dir. 1 Cox. 213.

Re The Suburban Hotel Co., 17 L. T. Rep. 22, L. R. 2 Ch. App. 737.

In re Red Rock Gold Mining Co., Ltd., 61 L. T. Rep. 785.

Buckley—Companies Acts, 7th Ed., 126, etc.

Palmer—Company Law, 8th Ed., vol. 2, p. 93.

Re J. E. Brinsmead & Sons (1897), 1 Ch. 45, 406.

Here the petition for the winding-up order, which was granted, alleged that the company itself was fraudulent.

See the recent case of *re Alfred Metson & Co.* (1906), 1 Ch. 841.

APPLICATION FOR ORDER.

12. By Whom Made.—The application for such winding-up order may, in the cases mentioned in paragraphs (a) and (b) of the last preceding section, be made by the company or by a shareholder, and in the case mentioned in paragraph (c) of the last preceding section by the company or by creditor for the sum of at least two hundred dollars, or, except in the case of banks and insurance corporations, by a shareholder holding shares in the capital stock of the company to the amount of at least five hundred dollars and in the other cases mentioned in the said section, by a shareholder holding shares in the capital stock of the company to the amount of at least five hundred dollars. R. S., c. 129, s. 8; 52 V., c. 32, s. 5; 62-63 V., c. 43, s. 4.

In the case of Banks, see *Mott vs. Bank of Nova Scotia* (1887), 14 S. C. R. 650.

See notes to sections 4, 14.

The words "Capital Stock" mean capital stock *de jure* or *de facto*.

Bowes vs. Hope Life Insurance & G. Co. (1865), 11 H. L. C. 389.

"Ordinarily speaking, it is not under the provisions of 25-26 Vict., c. 89, s. 199, a discretionary matter with the court, when a debt due by a registered company has been established and remains unsatisfied, to refuse to the creditor an order for winding up the company."

The decision being tantamount to saying that a winding-up order may be used to enforce payment. Opinions will differ on this point.

Re National Automobile Woodworking Co., Ltd., 17 D. L. R. 833.

Order under Dominion Statute—consent of creditor of shareholder—section 12 of the Winding-Up Act.

Re Canada Provident vs. Investment Corporation, 26 W. L. R. 326, 14 D. L. R. 782.

The holder of fully paid preference shares is a "shareholder" within section 12, and as such has a status to apply for an order winding up the company.

Re International Elec. Co., McMahan's Case, 20 D. L. R. 451, 31 O. L. R. 348.

An application for a winding-up order should not be granted when sought for the sole purpose of enforcing a single creditor's claim in a case where such claim could be as well enforced by a writ of execution. (Dictum per Meredith, C. J.).

Re International Trap Rock Co., 8 O. W. N. 461.

Petition by unsecured creditors under Winding-Up Act. Previous assignment by company for benefit of creditors. Sale of assets ordered by County Court Judge. Charge of collusion. Discretion.

Re The Colonial Investment Co. of Winnipeg, 14 D. L. R. 563.

In Manitoba where a petition for a winding-up order cannot be based on an affidavit of information and belief only, a verification in general terms of the several paragraphs of a supporting affidavit, by a statement that the deponent has read over certain numbered paragraphs of the petition and that they are true, ought

not to be encouraged, although constituting evidence which may be given effect to in the absence of conflicting material.

In re A. Company (1894), 2 Ch. 349.

"Where a petition against a company is presented ostensibly for a winding-up order, but really for another purpose, such as putting pressure on a company, the court has an inherent jurisdiction to prevent such an abuse of process, and will do so, without requiring an action to be commenced, by restraining the advertisement of the petition, and staying all proceedings upon it."

Re Pentalta (1898), W. N. 55.

"An equitable creditor may petition, but it is preferable and sometimes necessary that the legal creditor should join in the petition."

See also—*Re Anglo-Bavarian Steel Ball Co.* (1899), W. N. 80.

In re Gold Hill Mines (1883), L. R., 23 Ch. D. 210.

Held, by the Court of Appeal, that where a petition to wind up is improperly filed, the court has jurisdiction on motion to stay all proceedings under it, or to dismiss it; that the present petition was an abuse of the process of the court, being brought to compel payment of a small debt which was *bona fide* disputed, and being unsupported by any evidence that the company was insolvent, that the petition, therefore, must be dismissed with costs.

Moor vs. Anglo-Italian Bank (1879), L. R., 10 C. D. 681.

"The petitioner represented a mortgage debenture holder. *Held*, he could petition."

See cases cited.

"An incumbrancer or immoveable property situate in a foreign country, who has instituted legal proceedings in that country for the purpose of enforcing his rights, will not be restrained by injunction from prosecuting such proceedings, even though the mortgagor is a company in course of winding up, at all events if the party seeking to restrain him may appear before the foreign tribunal and assert his rights."

Re International Electric Co., 2 O. W. N. 665.

Winding-up order. Petition by company.

Re Borough of Portsmouth Tramways Co. (1892), 2 Ch. 362.

A debenture holder, who had brought an action to enforce his security, and had obtained the appointment of a receiver, presented a petition to wind up the company. *Held*:—That the exercise of his remedy as a debenture holder did not deprive him of his right as an ordinary creditor to present a winding-up petition, and that he was entitled to the order.

In re Herne Bay Waterworks Co., 10 Ch. D. 42, and

In re Exmouth Docks Co., Law Rep., 17 Eq. 181, not followed.

See other cases cited.

Leduc vs. The Kensington Land Co. (1899), 16 Que., S. C. 213. Loranger, J.

"The hypothecary creditor, who is not a personal creditor of a company, and can exercise against it only an hypothecary action in relation to the immoveable held by it, cannot petition for its winding up."

Confirmed in appeal, 25 November, 1901.

In re Western of Canada Oil, Lands and Works Co. (1873), 17 Eq. (L. R.) 1.

A creditor (debenture holder) of a company who cannot get paid without a winding up is entitled *ex debito justitiæ* to a winding-up order.

A creditor of a company who has, under section 80 of the Companies Act, 1862, served on the company a demand for payment of his debt, but has not been paid within the three weeks, is not necessarily entitled to an immediate order for winding up the company.

In re The Strathy Wire Fence Co. (1904), 8 O. L. R. 186.

Where an assignment for the benefit of creditors has been made by a joint stock company, a creditor of the company is not entitled as, of course, to a winding-up order. A discretion to grant or refuse the order exists notwithstanding the making of the assignment.

Wakefield Rattan Co. vs. Hamilton Whip Co. (1893), 24 O. R. 107, and *Re Maple Leaf Dairy Co.* (1901), 2 O. L. R. 590, approved.

Re William Lamb Mfg. Co. (1900), 32 O. R. 243, considered.

Where an assignment for the benefit of its creditors had been made by a company, and its assets had been sold with the approval of the great majority of its creditors and shareholders, an application to wind up the company made by a creditor and shareholder who had taken part in all proceedings, and had himself tried to purchase the assets, was refused.

Re Great West Coal Consumers Co., 21 Ch. D. 769.

In determining whether regard should be paid to the wishes of creditors who oppose the making of a winding-up order, the court ought to consider not only the number of the creditors and the amount of their debts, but also the reasons which they assign for their conclusion.

The *prima facie* right of an unpaid creditor of a company to a winding-up order is rebutted when it is shewn that a large mass of other creditors oppose the making of such an order.

A creditor's winding-up petition ordered to stand over for six months upon terms similar to those imposed in *Re St. Thomas' Dock Company*, 2 Ch. D. 116.

See cases cited.

In re National Permanent Benefit Building Society (1869), L. R., 5 Ch. 309.

A benefit building society has no power to borrow money unless its rules specially authorize it to do so.

The directors of a benefit building society, the rules of which gave no power to borrow money, borrowed a sum of money for the purpose of advancing it to their members on the security of their shares. The lender of the money afterwards presented a petition for an order to wind up the company:—

Held (reversing the decision of the Master of the Rolls), that the transaction was *ultra vires*, and that the petitioner had no legal or equitable debt against the company, and the petition was accordingly dismissed.

In re German Mining Co., 4 D. M. and G. 19, distinguished.

Many cases cited.

In re Paris Skating Rink Company (1877), L. R. 5 Ch. D. 959.

A creditor of a company being unable to obtain payment of his debt, presented a petition to wind up the company. Before the petition was heard he sold his debt and the right to proceed with the petition to a shareholder of the company, who obtained leave to amend the petition by making himself a co-petitioner.

Held, that the sale of the right to proceed with a winding-up petition ought not to be allowed, and the petition was dismissed.

Re People's Loan & Deposit Co. (1906), 7 O. W. R. 253. Magee, J.

This decision countenances the doctrine of the right of an assignee of a debt to petition, but requires the assignor to join in the petition.

Many cases are cited and distinguished.

In re Paris Skating Rink Co., the chief objection was the sale of the right to proceed with the petition.

See *in re European Banking Co.*, L. R., 2 Eq. 521, where a petition was refused because of the petitioner's lack of interest in the debt.

But:—*In re Masonic & General Life Assurance Co.* (1885), L. R., 32 C. D. 373.

Held:—"The executor of a creditor of a company is entitled to present a winding-up petition, before he has obtained probate; it is sufficient if he has obtained probate before the hearing of the petition."

Whether or not a creditor whose claim is not yet due for payment, may petition, is still an open question.

In 1892, in *re Powell*, W. N. 94, the negative was *held*; in 1897, in *re Australia Joint Stock Co.*, W. N. 38, such a petition was maintained and an order issued.

The petition may be made "by a creditor for the sum of at least two hundred dollars." See however, *McDonald vs. McCall* (1886), 12 Ont. A. R., p. 593.

This was an action under the Ontario Assignments Act, where it was held that under the description "creditor," a person whose claim was not yet due might sue to void a fraudulent preference. Cases cited.

This judgment was confirmed in the Supreme Court (13 S. C. R. 247), the head note being as follows:—"Where a trader who was in insolvent circumstances had given a chattel mortgage on his stock in trade to secure a debt, and shortly after executed an assignment in trust for the benefit of his creditors, *Held*, affirming the judgment of the courts below, that the mortgage was void under the Statute, and that certain simple contract creditors of such trader could maintain a suit 'on behalf of themselves and all other creditors except the mortgagees to set aside the mortgage without including the mortgagees as plaintiffs, and without attacking the assignment in trust.'"

Many cases cited.

In re Pen-Y-Van Colliery Co. (1877), L. R., 6 Ch. D. 477.

"A claim against a company for unliquidated damages on account of alleged fraudulent representation does not constitute the claimant a creditor, so as to enable him to petition either for a winding-up order or a supervision order, before he can so petition he must make himself a creditor by changing his claim for damages into a judgment."

In re Combined Weighing & Advertising Machine Co. (1889), L. R., 43 C. D. 99.

"A garnishee order does not create, as between the garnishor and garnishee, any debt either at law or in equity.

"Accordingly, a person who has obtained a garnishee order absolute directing a company to pay him a debt due by them to a

creditor of his against whom he had recovered judgment, does not thereby himself become a creditor of the company, and is not, therefore, entitled to petition for a winding up of the company, on failure by them to obey the order."

Many cases discussed.

Per Cotton, L. J.—"Of course, if there had been an order by the person to whom the debt was owing to pay to the petitioner, that would have been a good equitable assignment . . . 'a garnishee order does not operate as a transfer of the debt.'"

Per Fry, L. J.—"It is equally plain, to my mind, that the garnishee order therefore does not make the garnishor a creditor of the garnishee."

If, however, through default of the garnishee to answer and declare, as required by the writ of garnishment, a judgment is obtained against him for the amount of the debt by the garnishor, then as a judgment creditor, the garnishor could undoubtedly make such a petition.

Ex parte Mexican (1890), 34 Sol. Journal, 269.

Here it was laid down that one company might proceed by petition to wind up another company.

Can the liquidator of a company in process of winding up petition in the name of that company for the winding up of another company, a debtor of the one in liquidation?

See in re Winterbotham (1886), L. R., 18 Q. B. D. 446.

"By the Companies Act, 1862, sections 95 and 123, a liquidator appointed in the voluntary winding up of a company is empowered 'to bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company.'"

"*Held*, per Cave and Wills, J.J. The liquidator appointed in the voluntary winding up of a company may serve a bankruptcy notice, under the Bankruptcy Act, 1883, upon a judgment debtor of the company."

In re Iron Iron Company (1882), L. R., 20 C. D. 442.

A creditor of a mining company made repeated applications for payment through the year 1881, and on the 21st of December obtained a payment on account, and being unable to obtain more, he, on the 28th of December, issued a writ. On the 4th of January, 1882, a paid-up shareholder in the company, who was under considerable liability as a surety for the company, presented a petition to wind it up, setting out a balance sheet which shewed that the assets greatly exceeded the liabilities, but not alleging as a fact that they did so, stating that the company was unable to pay its debts, and that it was just and equitable that it should be wound up. On the 6th of January the creditor recovered final judgment without notice of the winding up petition, and on the following day issued execution. On the 14th of January the petition came on to be heard and was supported by creditors, and a winding-up order was made. The creditor then applied for leave to go on with the execution:—

Held, by Bacon, V. C., that leave ought to be granted:

Held, by the Court of Appeal, that the petition could not be treated as a petition collusively presented on behalf of a solvent company for the purpose of defeating the execution, for that the balance sheet could not be treated as proving the company to be solvent, and the petitioner, though not legally a creditor, was

virtually such, and by amending the petition by joining one of the supporting creditors it might have been made a creditor's petition; and consequently that leave to proceed with the execution ought not to be given.

Held, also, that leave ought not to be given on the ground that the creditor had given indulgence to the company, as he had never given time to the company in the sense of binding himself not to sue, but had merely abstained from suing. Whether the having given indulgence to a company is a sufficient reason for allowing a creditor to continue his proceedings notwithstanding a winding-up, *quære*.

Ex parte Railway Steel and Plant Co. In re Taylor, 8 Ch. D. 183, and *in re Richards & Co.*, 1 Ch. D. 676, doubted.

In re Rica Gold Washing Company (1879), L. R., 11 Ch. D. 36.

"A fully paid-up shareholder who presents a petition to wind up the company must both allege in his petition and shew by evidence—that there are assets of the company of such an amount that in the event of a winding up he would have a tangible share of surplus to receive.

"On a winding-up petition, as well as in an action, a vague allegation of fraud is not sufficient, but the facts which constitute the fraud must be stated, and if there is only a vague general allegation of fraud, evidence of the acts of fraud is not admissible.

"Whether a winding-up petition by a fully paid-up shareholder can be maintained where the company has no assets except moneys to be recovered by rescinding fraudulent transactions properly alleged in the petition *quære*."

Cases cited.

But see:

In re Chic. Ltd., L. R. (1905), 2 Ch. 345.

"On a winding-up petition presented by judgment creditors, it appeared that after the judgment the debenture holders of the company appointed a receiver of all the assets and undertakings of the company. He carried on the business of the company and incurred further liabilities. The assets were very small and were more than covered by the debentures. Under the circumstances it was impossible for the petitioners to shew that there would be any surplus assets, or that they would get any advantage from a winding up.

"Held, that in the special circumstances of the case, a winding-up order ought to be made."

In re The Union Hill Silver Co., Ltd. (1870), 22 L. T. Reports, p. 401.

Held, a person who has been induced to subscribe for stock by false representations is not entitled to an order on that ground. The directors, etc., are personally liable. His recourse is a direct action.

Held, where resolutions for winding up a company voluntarily were passed by the shareholders, there being only one dissentient shareholder, the court refused to entertain a petition presented by such shareholder for a compulsory winding-up order, on the ground that the meetings at which the resolutions were passed were not in all respects regular

Re Beaujolais Wine Co., L. Rep., 3 Ch. App. 15, followed.

Other cases cited.

Re Sheilds Marine Insurance Co. (1867), W. N. 265-296.

One petition to wind up two companies is irregular.

13. How and Where Made.—Such application may be made by petition to the court in the province where the head office of the company is situated, or if there is no head office in Canada, then in the province where its chief place or one of its chief places of business is situated.

2. Notice of Application.—Except in cases where such application is made by the company, four days' notice of the application shall be given to the company before the making of the same R. S., c. 129, s. 8; 62 V., c. 32, s. 6.

It is to be observed that this Act provides for compulsory winding up only; and the application can only be made by one who is a creditor for at least two hundred dollars. In this respect it differs from the English statute, which embodies elaborate provisions for voluntary winding up. In Canada a voluntary winding up may sometimes be effected under various provincial enactments, *e. g.*, the Ontario Winding-Up Act provides that the application may be made by a shareholder; or again, a company in insolvent circumstances may make a voluntary assignment for the benefit of its creditors. The court will generally adopt the wishes of the majority of the creditors if they are not unanimous as to which mode should be followed. *The Wakefield Rattan Company vs. The Hamilton Whip Company, Limited* (1893), 24 O. R. 107.

The Dominion Winding-Up Act cannot be put into operation by shareholders, but is intended to be put into operation at the instance of creditors only. In this respect it is like the Insolvent Act of 1875. *Re Union Ranch Company of Canada, Limited* (1888), 15 O. R. 307. See also, *re Steel Company of Canada, Limited*, 5 Russ & Geld (N. S.) 55.

As regards the necessary notice of application to the company referred to in this section, see *in re Arnold Chemical Company* (1901), 2 O. L. R. 671; *in re Abbott-Mitchell Iron & Steel Company* (1901), 2 O. L. R. 143.

Service of a petition for a winding-up order on an assignee for the benefit of creditors, of a company is not service as required by this section, such assignee not being an agent of the company for the purpose of such service within Ontario Cons. Rule 159, at any rate when the president and directors are readily accessible and have given no express authority to the assignee to accept such service. *In re Rodney Casket Co.*, 1906, 12 O. L. R. 409.

Champlain Real Estate Co. vs. Dame Marie M. Racine, 15 Que. P. R. 87.

The Superior Court has exclusive jurisdiction in the Province of Quebec, in proceedings under the Winding-Up Act.

Pontbriand Co. vs. Cosky, 14 Que. P. R. 19.

Four days' notice to the company of the application for a winding-up order is not required when the company is a party to the application.

Re Manitoba Commission Co., Ltd., 22 Man. L. R. 268; 2 D. L. R. 1.

A petition for winding-up order cannot be supported by statements verified by an affidavit on information and belief only. (*Gilbert vs. Endeau*, L. R., 9 Ch. D. 259, applied).

Re The Stewart River Gold Dredging Co., Ltd., 7 D. L. R. 736.

An application for an order to proceed with the winding up of a company in the Yukon Territory is properly made pursuant to the rules of procedure made by the judges of the Supreme Court of the Northwest Territories at a time antecedent to the separation of the Yukon Territory from the Northwest Territories, since no rules have been made modifying or replacing those rules.

Re Baynes Carriage Co. (No. 2), 8 D. L. R. 309.

The petitioners for a winding-up order are not entitled to a preliminary order that certain of the company's officers should produce on their examination, not yet entered upon as compulsory witnesses in support of the petition, the books of the company and the auditor's reports, as the extent to which the petitioners may be entitled to use such books and documents cannot be decided until the course of the cross-examination is known.

Re Dyncore Collieries Co. (1878), W. N. 199.

Where the petitioner dies before the hearing of the petition, it is possible under this case that an order to continue proceedings could be obtained.

In re Langham Skating Rink Co. (1877), L. R., 5 C. D. 669.

The petition did not allege any of the cases mentioned in the statute, and did not contain allegations sufficient to make a case for interference. A winding-up order could not issue, and the petition should be dismissed.

Cases cited.

In re Rica Gold Washing Co. (1879), L. R., 11 C. D. 36.

"On a winding-up petition, as well as in an action, a vague allegation of fraud is not sufficient, but the facts which constitute the fraud must be stated, and if there is only a vague general allegation of fraud, evidence of the acts of fraud is not admissible.

See notes to section 12.

Re Kootenay Brewing, etc., Co. (1898), 6 B. C. R. 131.

"To the making of a winding-up order it is essential: (1) That the petition upon its face make a sufficient case for the winding up, and (2) that the petition should be supported by a sufficient affidavit filed before its presentation.

"Leave to file a supplementary affidavit is refused."

Cases cited.

In re Wear Engine Works Co., L. R., 10 Ch. App. 188, at p. 191. James, L. J., says: "We wish it to be understood that a winding-up petition must allege facts which justify a winding-up order; and it is not enough that a sufficient case be shewn in evidence; a sufficient case must be stated on the petition, that the order may be *secundum allegata et probata*."

See also,

Steam Stoker Co., L. R., 19 Eq. 416, Bacon V. C. *In re European Life Ass. Soc.*, L. R., 9 Eq. 122.

In re Chic Ltd., L. R. 1905, 2 Ch. 345. Where the contrary was held—though here there were special circumstances, it being admittedly an impossibility for the petitioner to show that there would be a surplus or any advantage from a winding up.

And see: *In re Crigglestone Coal Co., Ltd.* (1906), 2 Ch. D. 326.

"A creditor's petition for a winding-up order was opposed by debenture holders, who had a floating charge on all the property of the company, and who had obtained the appointment of a

receiver in an action to enforce their security, and by the company, which was under the control of the debenture holders, on the ground that there were no assets available for the unsecured creditors:—

“*Held*, that the onus was on the respondents to prove that there was no reasonable possibility of any benefit accruing to the unsecured creditors from the winding up, and that unless that onus was discharged the petitioner was entitled to a winding-up order in order that the unsecured creditors might be represented by the official receiver in the proceedings in the debenture holders’ action.”

Decision of Buckley J. affirmed.

Per Buckley J.: “The court has jurisdiction to make a winding-up order on a creditor’s petition which is not opposed by the unsecured creditors if the order will be useful, not necessarily fruitful, and it is no answer that the debenture holders will or may sweep up all the assets; and the tendency of the court since the passing of the Companies (Winding-Up) Act, 1890, is not to refuse a winding-up order in such a case on the ground that there are no assets unless it sees that the petition is presented simply for the purpose of making costs.”

In re St. Thomas’ Dock Co. (1876), 2 Ch. D. 116, and *in re Chapel House Colliery Co.* (1883), 24 Ch. D. 259, discussed.

Other cases cited.

The petition should cover as many as possible of the sub-sections of section 11.

The petition should state the circumstances with sufficient detail to enable the court to see from the petition itself that a winding-up order ought to be made.

Re Eldorado Union Stove Co. (1886), 18 N. S. 514.

Wear Engine Works Co.—cited above.

White Star Consolidated Gold Mining Co. (1883), 48 L. T. 815.

Patent Cocoa Fibre (1876), 1 Ch. D. 617.

Rica Gold Co. (1879), 11 Ch. D. 36.

Re Queen’s Benefit Building Society (1871), L. R., 6 Ch. 815. A petition may be amended by leave of the court.

Re Home Assurance Co. (1871), L. R., 12 Eq. 112 (No. 2).

“A petitioner—an unsatisfied judgment creditor—residing out of the jurisdiction, asking for an order for the compulsory winding up of an association, was, on the application of the respondents, ordered to give security for costs to the amount of £100.”

Cases cited.

But see:

Re Contract & Agency Co. (1887), W. N. 218.

Re Home Assurance Co. (1871), L. R., 12 Eq. 59.

Costs:—“A creditor of a company, who had presented a petition for a winding-up order, and duly advertised it:—

“*Held*, entitled to dismiss his petition with costs, notwithstanding the objection of another creditor appearing on it; but the costs of the objecting creditor were included in the order.”

Pontbriand Co. vs. Cosky, 14 Que. P. R. 19.

Four days’ notice to the company of the application for a winding-up order is not required when the company is a party to the application.

Pontbriand Co. vs. Cosky, 14 Que. P. R. 19.

A winding-up order may be granted in vacation.

Re Toronto Brass Co., Ltd. (1898), 18 Ont. P. R. 248.

"An order for the winding up of a company, upon petition, under R. S. C. cap. 129, may be made by a judge in chambers."

See cases cited, for a discussion of the section prior to the amendment of 1889. See also section 109.

Affidavit—re African Farms, Ltd. (1906), 1 Ch. 640.

"Rule 29 of the Companies (Winding-Up) Rules, 1903, which provides that a petition for winding up a company shall be verified by an affidavit made by the petitioner, is merely directory as to the kind of affidavit to be accepted as *prima facie* evidence of the statements in the petition. The court will, therefore, in a proper case, accept the affidavit of the petitioner's attorney or agent particularly where it is satisfied that the material facts are more within the knowledge of the deponent than of the petitioner himself."

In re Charterland Stores & Trading Co. (1900), 2 Ch. 870, dissented from.

Compare, under English practice, *Gilbert vs. Endeau*, 9 C. D. 266.

The following case is also of interest:—

In re Fortune Copper Mining Co. (1870), L. R., 10 Eq. 390.

"Where a winding up petition was presented under a power of attorney executed by petitioners resident in a colony to a solicitor in this country, it being impossible to comply with rule 4 of the order of November, 1862, the court made the order upon verification of the petition by an affidavit of the solicitor, deposing of his own knowledge to the facts stated in the petition, but with the consent of the Lord Chancellor."

In re Kearns Ink & Wax Co. (1907), an unreported decision of Anglin J., cited by Parker & Clarke at p. 364, *held*, "that service of the petition on the vice-president of the company when it was not shewn that the president could not be served, was not a good service on the company."

Re Belding Lumber Co., 2 O. W. N. 739, 755. Affidavit not filed before service.

Re Manitoba Commission Co., Ltd., 2 D. L. R. 1, 22 Man. L. R. 268.

A petition for a winding-up order cannot be supported by statements verified by an affidavit on information and belief only.

Re Manitoba Commission Co., Ltd., 22 Man. L. R. 268.

The petition must allege, and petitioner must strictly prove, the existence of one or more of the circumstances set out in section 3, which would justify an order for winding up.

Re The Stewart River Gold Dredging Co., Ltd., 7 D. L. R. 736, 22 W. L. R. 315.

In the Yukon Territory the rules of procedure made by the judges of the Supreme Court of the Northwest Territories suffice in making a petition for a winding up, since no rules have been made modifying or replacing these rules.

Re Arnold Chemical Co. (1901), 2 Ont. L. R. 671, Boyd, C. J.

Under section 8 of the Winding-Up Act, R. S. C. 1886, ch. 129, a petition was held properly lodged, where notice of its presentation was given on the 4th for the 8th November.

DeLorimier vs. The Can. Gas & Oil Co., etc. (1908), 34 Que. S. C. 381, Cooke, J.

"The service of a petition for a winding-up order is validly made at the office of the company by the delivery of a copy to an employee in charge of the officer." *Citing:—Montreal Gas. Co. vs. The U. S. Ammonia Co. (1893), 4 C. S. (Que.), p. 51. Mathieu, J Re Nelson Ford Lumber Co., 1 Sask. R. 108.*

Held, that a foreign corporation, not registered under the provisions of the Foreign Companies Ordinance, cannot maintain an action or institute proceedings unless it be shewn by such corporation that the contract in respect of which such action is brought or proceedings taken arose by an order given to a traveller in the province or by correspondence, and that the corporation has not in this province any place of business.

Barter vs. International Steel Co., 10 Que. P. R. 27.

The Winding-Up Act has established a special tribunal of exclusive jurisdiction (to wit, the Superior Court) for disposal of claims against a company in liquidation; an action taken in the Circuit Court will, therefore, be referred to the Superior Court.

Wetzel Company vs. Oriental Silk Co., 9 Que. P. R. 289.

A petition for a winding-up order of a company incorporated by Dominion letters patent must be presented where the company has its head office.

Re Belding Lumber Co., 23 O. L. R. 255.

Two petitions to wind up a company. First not granted because the affidavit in support, required by Con. Rule 524 (Ontario) made applicable by section 135 of the Winding-Up Act, was not filed before service of the petition. The order should be made upon the second petition.

See section 135. As to leave to appeal, see case cited under section 101.

Re Qu'Appelle Valley, etc., Co. (1888), 5 M. L. R. 160, Taylor, C. J.

Held (1): Notice of an application for a winding-up order need not be served upon creditors, contributories or shareholders of the company. They should be served with the application to appoint a liquidator.

Clarke vs. Union Fire Insurance Co. re Shoolbred (1886), 10 O. R. 489.

Held: In proceedings for a winding-up order under the above statutes, *i.e.*, 47 Vic., c. 39 and 45 Vic., c. 23, notice need be given only to the company, and perhaps also to creditors, who have brought action against the company, which would be stayed by the winding-up order.

See also in re Union Fire Insurance Co., 13 O. A. R. 272.

Scott vs. Hyde, 18 Que. K. B. 138.

The general rule that a winding-up order made against a company, after appearance and contestation by it, is conclusive against the shareholders, does not apply where the ground taken is that the company was not subject to the Winding-Up Act, or that the petition for the order had not been served upon it, and was a fraudulent abuse of the process of the court.

The material words of the section 8 are:—"When a company becomes insolvent, a creditor may, after four days' notice of the application to the company, apply by petition for a winding-up order."

Cases cited.

Note, however, that section 13 of the present Act says "four

days' notice of the application shall be given to the company before the making of the same."

It is clear from the section that if the company makes the petition, no notice is necessary. Otherwise, a notice of presentation must be served.

Re The Qu'Appelle Valley Farming Co., Ltd. (1888), 5 Man. L. R. 160.

"Notice of an application for a winding-up order need not be served upon creditors, contributories or shareholders of the company. They should be served with notice of the application to appoint a liquidator."

Miscellaneous Cases. Evidence. Service. Affidavit.

In Ontario, see Consolidated Rules of Practice, rules 490, 524, 159, etc.

In Quebec, see the Code of Civil Procedure and Rules of Practice.

In re Victor Varnish Co., an unreported decision of Falconbridge C. J., October, 1907, holds that the court cannot waive compliance with Consolidated Rule of Practice 524. (See Parker & Clarke, p. 364).

Re Western Insurance Co. (1873), 6 Ont. P. R. 86.

"It is unnecessary and irregular to file a petition before it is heard. The proper proceeding in order to bring it before the court, is to serve a copy with a notice of a day for hearing endorsed."

This decision of an Ontario court should be examined before being followed in other provinces. In Ontario it would be subject to later rules and especially those relating to chamber practice.

See also, *Smith vs. Harwood*, 1 Sm. and G. 137.

As to service of the petition see the practice in the different provinces.

Parker vs. Clarke, p. 364.

Re Farmers' Bank, 2 O. L. R. 556.

Bank. Winding up. Four days' notice. Application of Rules of Practice.

Re Abbott-Mitchell Iron & Steel Co., Ltd. (1901), 2 Ont. L. R. 143. Meredith, C. J.

"Service of the specially indorsed writ of summons in an action against the company to recover the amount of a creditor's claim is not a sufficient demand in writing, within the meaning of section 6 of the Winding-Up Act, R. S. C. 1886, ch. 129, to serve as the foundation for a petition by the creditor for a winding-up order.

Scmble, that, as section 8 of the Act requires the petitioner to give four days' notice of his application, effect could not be given to a ground of which the company had not that notice."

It appears from the judgment that when the petition first came up for argument leave was granted, the case of the petitioners not having been made out, to amend by setting up a demand in writing of payment, and the neglect for sixty days to comply with the demand. Such permission is, however, unusual.

14. Power of Court on Application.—The court may on application for a winding-up order, make the order applied for, dismiss the petition with or without costs, adjourn the hearing conditionally or unconditionally, or make any interim or other order that it deems just. R. S., c. 129, s. 9.

The court has a wide discretionary power under this section. When it appeared, on the application for a winding-up order, that the company had previously made a voluntary assignment for the benefit of its creditors, and that the great majority both in number and value of the creditors wished the liquidation to be proceeded with thereunder, the application was refused. *The Wakefield Rattan Company vs. The Hamilton Whip Company (Limited)*, (1893) 24 O. R. 107. But in a later case it was held that where the insolvency was acknowledged, the court has no discretion under this section to refuse to grant a winding-up order, upon the petition of a creditor substantially interested, even though the company has already made a voluntary assignment which is satisfactory to the majority of its creditors. *In re W. Lamb Mfg. Company* (1900), 32 O. R. 243. But in a still later case (*Re Maple Leaf Dairy Co.* (1901), 2 O. L. R. 590), it was held that the court had a discretion to grant or withhold a winding-up order under this section, Boyd C. dissenting from the decision given by Meredith, C. J., in the above cited case of *Re William Lamb Manufacturing Company*, 32 O. R. 243. See also *West Hartlepool Iron Works Co.* (1875), L. R., 10 Ch. 618. In the course of his judgment Boyd, C., cited the following quotation from the judgment of Cozen-Hardy, J., in the case of *In re Havercraft Gold Reduction Company* (1900), 7 Mans. 243, at p. 249. "The existence of a voluntary winding up is a strong reason why the court should decline to interfere, but circumstances may justify interference.

When an assignment for the benefit of creditors has been made by a company a creditor of the company is not entitled as of course to a winding-up order. A discretion to grant or refuse the order exists notwithstanding the assignment. Order refused under the circumstances of this case. *In re The Strathy Wire Fence Co.*, 1904, 8 O. L. R., 186.

When a creditor presents a petition for winding up in ignorance of a prior petition, he is entitled to costs only up to the time when he has notice of the latter. But if he has good reason to believe that the other petition is not *bona fide*, he is justified in proceeding, and may then be allowed all his costs. *In re General Financial Bank*, L. R., 20 C. D. 276. A petitioner who withdraws his petition for a winding-up order will generally be compelled to pay the costs of the parties appearing. But the matter is wholly within the discretion of the court. *In re Nacupai Gold Mining Company*, 28 C. D. 65. *In re District Bank of London*, 35 C. D. 576.

Where there were two petitioners for a winding-up order against one company, although orders were made under both petitions, the conduct of the proceedings was given to the later petitioner, a creditor for money paid, in preference to the earlier one, who was shown to be an employee of and in close touch with the company. *Re Estates Limited*, 1904, 8 O. L. R. 564.

Re Charles H. Davis Co., Ltd. (1907), 9 Ont. W. R., p. 993, Britton, J.

"I quite realize that there is a discretion to grant or refuse a winding-up order, as pointed out in *re Strathy Wire Fence Co.*, 8 O. L. R. 186, and I somewhat reluctantly exercise the discretion in this case against what seems to be the wish of a majority of the creditors of this company—but minority creditors have their rights, and having regard to the allegations in reference to the formation of a new company to take over a portion of the business carried on by the Charles H. Davis Co., Ltd., I am of opinion that the winding-up order should be made."

See also:

Re Lake Winnipeg Transportation, etc., Co., 7 Man. L. R. 255. Cited under section 3 (h).

In re Diamond Fuel Co. (1879), L. R., 13 Ch. D. 400.

"A company had for some time ceased to carry on business, though it was not clearly made out that it had so ceased for a year. Its business had been carried on at a constant loss; all its capital had been expended, its property had been sold at a ruinous sacrifice with the exception of some patents which were nearly worthless, and it had nothing left but these patents and a sum of money far from sufficient for payment of its debts. A shareholder, who had paid up his shares with the exception of the last call, presented a petition for winding up, alleging a case of misconduct against some of the directors, by reason of which, if established, they would be liable to pay considerable sums to the company, which would probably leave a surplus for division among the shareholders. At the hearing, the objection being taken that the petitioner being in default for payment of calls could not petition, he offered to pay the amount into court. He was allowed to do so, and a winding-up order was made. A liquidator was then appointed, after which the company appealed. One of the directors had, in the meantime, been ordered to pay a considerable sum under section 165 of the Companies Act, 1862.

"*Held*, that although a liquidator had been appointed, the company was not precluded from appealing:

"*Held*, also, that the fact that a shareholder is in arrear with calls is not an absolute bar to his petitioning for a winding-up order:

"*Held*, that as it was established that the business of the company could not possibly be resuscitated, it was just and equitable that the company should be wound up; and that as a reasonable probability was shewn that sums could be recovered from the directors to such an amount as would leave a surplus for division among the shareholders, an order for winding up had been properly made on the petition of a fully paid up shareholder."

Cases cited.

In re Chapel House Colliery Co. (1883), L. R., 24 Ch. D. 259.

"Although, as a general rule, an unpaid creditor of a company which cannot pay its debts is entitled to a winding-up order, that order will not be made when it is shewn that the petitioning creditor cannot gain anything by a winding-up order, and *a fortiori*, it will not be made under those circumstances if other creditors oppose it."

In re Uruguay Central, etc., Ry. Co., 11 Ch. D. 372, approved.

"The colliery belonging to a colliery company was subject to a large mortgage payable by instalments, and all its assets had been assigned to trustees upon trust for its debenture holders, who had no present right of action against the company for the principal of their debts, which was not payable till 1885, but only for the arrears of interest, which were considerable. The colliery was not worth so much as the mortgage money, but it was worked at a profit, and the instalments of the mortgage debt were being paid, but nothing was left to pay interest to the debenture holders. There appeared, however, to be reason to think that if the business were continued, and the coal trade improved, there would be something for the debenture holders. The colliery was leasehold and liable to forfeiture if the company was wound up. A holder of debentures to a

small amount presented a petition to wind up the company, the debt on the footing of which he petitioned being the arrears of interest on his debentures. A vast majority of the other debenture holders opposed the petition, and none of them supported it. Kay J., thought the case not a proper one for making a winding-up order, but directed the petition to stand over for six months.

Held, on appeal, that the petition ought to be dismissed at once."

Cases cited.

Compare *Re Chic Ltd.* (1905), 2 Ch. 345.

See *Re Crigglestone* (1906), 2 Ch. 327.

Cited in notes to section 13.

Re Grundy Store Co. (1904), 7 Ont. L. R.

"To enable a company to be wound up under the Act (1886, ch. 129), it is not sufficient for the company to appear by counsel and admit insolvency and consent to be wound up, but the facts, as required by the Act, shewing insolvency must be disclosed in the material on which the petition is based."

Re Flagstaff Silver Mining Co. of Utah (1875), L. R., 20 Eq. 268; and *re Yate Collieries & Limeworks Co.* (1883), W. N. 171, distinguished.

In re Georgian Bay Ship Canal vs. Power Aqueduct Coy. (1898), 29 Ontario Reports 358.

"A winding-up order will not be granted where there are no assets, and the petitioning creditor would, therefore, get nothing by the order. Where, however, on a petition for such an order, which was contested on the ground of the alleged non-existence of assets, it appeared that there was an amount of subscribed stock only partially paid up, an amount of stock issued as paid up, the consideration for which did not satisfactorily appear, and also a large issue of bonds which appeared to have been of very little benefit to the company, and it was impossible to say whether they were held for value or not, an order was granted winding up the company."

In re Chapel House Colliery Co. (1883), 24 Ch. D. 259, distinguished. Other cases cited.

Re Western of Canada Oil Co., L. R., 17 Eq., p. 1.

Per Lord Selborne at p. 6. "I entirely agree with the doctrine that if a creditor cannot get paid without winding up, it is *ex debito iustitiæ* that he should have a winding-up order, but so far am I from thinking that it would be a certain consequence of delaying this case until November, that the creditors would be denied payment, that I think there is at least a fair, possible and reasonable chance of their getting paid by means of that delay very much earlier than they would be under a winding-up order, because it may turn out from the result of the investigation that assets will be sent over to this country for the purpose of paying the whole of the debts which are now unpaid, and the interest now overdue."

Three months later the petition accordingly came up again. Sir G. Jessel, M. R., then gave judgment as follows:—

"A delay of three months was thus granted to the company. After an interval of three months and four days the petitions again come on, not a word of evidence is brought forward to shew what has been done in the meantime; not a line of affidavit is put on file to shew what investigations have been made, or what probability there is that the debts will be paid. I can only assume

that the company have not chosen to avail themselves of the opportunity given them by the Lord Chancellor, and there must, consequently, be the usual winding-up order."

Re The Consolidated Bank (1866), 14 L. T. Reports, p. 636. for their conclusion.

"Where a petition was pending for winding up a company in one branch of the court, and an official liquidator had been provisionally appointed, but the petitioner had failed to prosecute the petition within the time limited,

"The court, in the interim, granted to a second petitioner, in another of its branches, an order to wind up the company."

Delay was asked for in view of the first petition being still pending.

Per the Vice-Chancellor:—"If any evidence had been brought before the court to justify it in considering that the bank would be immediately reopened for business he should certainly not now make any order to wind up the affairs of the company; but the statement respecting the prospects of the immediate reopening of the bank had only been made at bar after many objections which were futile, had been taken to the petition. The right of the petitioners was perfectly clear, and there must be an order to wind up the company."

In re Matheson Bros., Ltd. (1884), L. R., 27 C. D. 225.

The court has jurisdiction (under section 199 of the Companies Act (1862) to wind up an unregistered joint stock company, formed, and having its principal place of business in New Zealand, but having a branch office, agent, assets and liabilities in England.

The pendency of a foreign liquidation does not affect the jurisdiction of the court to make a winding-up order, in respect of the company under such liquidation, although the court will, as a matter of international comity, have regard to the order of the foreign court.

It being alleged that proceedings to wind up the company were pending in New Zealand, the court, in order to secure the English assets until proceedings should be taken by the New Zealand liquidators to make them available for the English creditors *pari passu* with those in New Zealand, sanctioned the acceptance of an undertaking by the solicitor for the English agent of the company, that the English assets should remain in *statu quo* until the further order of the court. Many cases cited. *In re Commercial Bank of India*, L. R., 6 Eq. 517, approved. Where a joint stock company formed in India, registered under Indian law, and having its principal place of business in India, with an agent and a branch office in England, was ordered to be wound up, and Lord Romilly said:—"I think I have jurisdiction to make the order; if the company is not wound up here, these persons will not be able to get their money."

Proceedings in different countries:

Louth vs. The Western of Canada Oil Co., etc., Ltd. (1875), 22 Grant's Chancery R. (Ont.) 557.

"The holder of bonds of a joint stock company (limited), after instituting proceedings in the Court of Chancery in England, for the sale of the partnership property, which was situated in Canada, and after the appointment of a receiver in England of the estate in England and Canada, filed a bill for the like purpose, and this court appointed the agent of the receiver, the receiver here; after which it appeared that the company went into liquidation, the

liquidator being the same person as had been appointed receiver in England. The plaintiff, after an amendment of his bill stating these proceedings, moved for a decree in the terms of the prayer of his bill; but the court refused to make any decree until it was shewn what the position of matters was in England, and the steps about to be taken there, so as to avoid any conflict between the two courts, and mould the order here to give the appropriate relief, without interfering with the steps which were being taken in England for the same object."

Per Blake, V. C.—"In a case such as the present, I do not think it would be proper for this court to interfere in respect of property controlled by the English court, as is that here; Although independent relief is asked by the present bill, the suit is one in aid of proceedings in England, and the shape the assistance to be given here should take will depend on what has been done by the Court of Chancery in England or in the liquidation proceedings."

This appears to be a leading case in Canadian Courts. The following decisions, among others, may be consulted:—*Wilson vs. The Natal Investment Co.*, 33 L. J. Ch. 312; *Gray vs. Roper*, L. R., 1 C. P. 694; *Thomas vs. Wells*, 16 C. B., N. S., 526; *re The Panama & New Zealand Co. L. R.*, 5 Ch. 318; *re The Oriental Inland Steam Co.*, L. R., 9 Ch. 557; *Houlditch vs. Marquis of Donegal*, 8 Blight N. S. 301; *Morris vs. Chambers*, 29 Beav. 253.

The principle governing in such circumstances, is that the court of original jurisdiction. See *e.g.*, in *re General Company* for proceedings have commenced, will guide and direct those proceedings, the courts of another country, where assets are to be found and where proceedings are instituted, acting in concert with the court of original jurisdiction. See *e.g.*, in *re General Company for the Promotion of Land Credit*, L. R., 5 Ch. 363, 380. Here the company was incorporated in England, and contemplated doing business in England. After registration it carried on business on the continent, where were its assets and all of its directors. *Held*, it had not ceased to be an English company, governed by English law, and subject to a winding-up order issued out of English Courts, p. 380. *Per Giffard, L. J.*:—"Then it is said that although I make this order to the foreign courts recourse will probably be necessary. But according to all the principles of international law the foreign courts will recognize this winding up, and will aid in carrying out any directions that may be given under it. The main object will probably be for the purpose of realizing the company's property, and I can see no reason why this company's property should not be realized abroad in the hands of the liquidators."

See also: *Smith vs. Henderson* (1870), 5 Grant's Chancery R. (Ont.), Strong, V. C. "Where a trustee of lands situated in a foreign country is resident within this province, the court will decree an execution of the trust."

Lindley: Companies, 6th Ed. p. 839, 840.

P. 859:—"The fact that the company is substantially a foreign company, and that there will be great difficulty in winding it up, is not sufficient to justify a refusal to make a winding-up order; and a winding-up order may be made even though winding-up proceedings are pending abroad. If these proceedings are pending in the country of the company's domicile, it is usual to make the winding up here ancillary to them."

The following decision further illustrates the point:—

Maritime Bank vs. Stewart et al. (1889), 13 Ont. P. R. 86.

Rose, J. "The action was commenced in March 1887, by the liquidators of the Maritime Bank, to recover the sum of \$220,000 from the defendants. The defendants having become subject to proceedings in bankruptcy (apparently in England), the liquidators presented their claim and lodged it with the assignee in bankruptcy in England on the 7th September, 1887. The object of their proving the claim was to oppose a scheme of arrangement with creditors which was then before the court. Upon the claim being tendered, the assignee stated that he would not recognize it unless the proceedings, which were then going on in the Common Pleas Division of the High Court of Ontario, were stayed or withdrawn. This was not assented to by the liquidators, and the claim was not withdrawn.

"The judge in bankruptcy in England made an order enjoining the plaintiffs from proceeding with this action in the High Court of Justice for Ontario, and subsequently an order was made in this action by the Master in Chambers in Toronto, staying the proceedings for ever."

From the judgment of the Master this appeal was taken.

Mr. Justice Rose cited and rested upon the decision in *Howell vs. Dominion of Canada Oils Refinery Co.*, 37 U. C. R. 484, "Where Mr. Justice Wilson dealt with the power of the court to stay proceedings in aid of the proceedings in England which were then being had in respect of that company and its winding up. He uses this language: 'Under the equitable power we now possess, I assume we may entertain such an application and give effect to it, if it be found the Court of Chancery could do so in this province. And I do not know why, if it is our duty to recognize these winding up proceedings in actions which are brought here in respect of them, we should not equally give effect to all the other provisions of the Act necessary to enable the proper results of that proceeding to be duly worked out according to the powers, legal or equitable, with which we are invested. These results cannot be worked out by permitting this action to be carried on. The parties in this suit are now before the proper court in England to deal with any matter concerning the company and including, of course, the matters of this action; and that court has by its officer the possession and custody of all the property and effects of the company, to distribute among the creditors and shareholders.' Language applicable to the facts of this case, where it is conceded that by the effect of the assignment all the property of the debtor, whether in England or in the Colonies, is vested in the assignee in bankruptcy in England. If authority were needed for that proposition, it might be found in *Robson vs. Carpenter*, 11 Grant's Ch. R. (Ont.) 293, and also in *Ellis vs. McHenry*, L. R., 6 C. P. 228, and in *Maxwell*, where the principle is discussed or noted of personal property following the *situs* of the owner."

And also, p. 90: "In regard to personal property, the Bankruptcy Acts of England apply all over the Queen's dominions." See in this connection also:—*Regina vs. College of Physicians & Surgeons of Ontario*, 44 U. Can. R. 564, where the effect of the Imperial Act and its operation with regard to this province were discussed.

Re Alpha Oil Co. (1887), 12 Ont. P. R. 298. Boyd, C.

"Upon a contest for the appointment of liquidator in a winding-up proceeding, it is desirable to follow the rules for guidance to be found in the English cases under the Winding-Up Acts. The court abstains from laying down any such rule as that the nominee of

the petitioning creditors should have a preference. The court will consider the condition of affairs to ascertain what parties are most interested in the due administration of the estate in liquidation, and other things being equal will act upon their recommendation. See also: *Re Hayland Co.*, W. N. 1884, p. 13.

"And where upon an application under the Dominion Act, the creditors were those whose interests were most to be regarded, and the great bulk of them favoured the appointment of the sheriff of Lambton, and opposed the nominee of the petitioning creditors, and the sheriff resided in the county where the company's operations were carried on, and where all its books and assets were, was already *de facto* liquidator under voluntary proceedings taken pursuant to the Ontario Act, and was otherwise well qualified for the position, the court appointed him liquidator."

The rule as to costs suggested in *re Northern Assam Tea Co.*, L. R., 5 Ch. App. 644, followed.

The Quebec Bank vs. Bryant (1893), 3 Que. S. C. 122. Andrews, J.

Held, where Canadian creditors of a joint stock company, incorporated under the (Imperial) Companies Act, 1862-83, are proceeding to execute a judgment obtained in courts of this province upon assets of the company situate within the province, a liquidator named in Great Britain to the voluntary winding up of such company cannot intervene and demand that the company's assets be removed to Great Britain, to be there by him distributed in accordance with the provisions of the said Companies' Act.

Quære, has such liquidator any standing before the courts of this province?

Allen vs. Hanson et al., 16 Que. L. R. 87; 18 S. C. R. 667.

Osgood et al. vs. Steele et al., 16 L. C. J., 141.

Pacaud vs. Tourigny and The Niagara District Mutual Fire Insurance Co., 10 Q. L. R. 54.

In Appeal. The liquidator appointed in the course of the voluntary winding up of a company formed in England under the Joint Stock Companies Acts, 1862-83, has no right to the possession of monies of the company in this province previously attached by process under a judgment rendered against it, and an intervention by him to quash the attachment and obtain such possession is properly dismissed on demurrer.

Powis vs. Quebec Bank (1893), (Que.) 2 K. B. 566. Citing cases and commentators.

The Quartz Hill Consolidated Gold Mining Co. vs. Eyre (1883), L. R., 11 Q. B. D. 674.

"An action will lie for falsely and maliciously and without reasonable or probable cause presenting a petition under the Companies Acts, 1862, 1867, to wind up a trading company, even, although, no pecuniary loss or special damage to the company can be proved, for the presentation of the petition is, from its very nature, calculated to injure the credit of the company.

(2). *In re A. Company* (1894), 2 Ch. 349.

"Where a petition against a company is presented ostensibly for a winding-up order, but really for another purpose, such as putting pressure on a company, the court has an inherent jurisdiction to prevent such an abuse of process, and will do so, without requiring an action to be commenced, by restraining the advertisement of the petition, and staying all proceedings upon it.

Contempt of Court: Comment on Pending Petition.

(1) *In re Crown Bank. In re O'Malley* (1890), 44 C. D. 634.

"Comments were made in a newspaper on a pending petition by a shareholder to wind up a banking company, with reference to an intended cross-examination of directors it was said, 'if they are compelled to make a full statement of the affairs of the bank, we shall have some interesting revelations.' Previously to the presentation of the petition a series of articles calling in question the conduct of the directors had appeared in the newspaper. The court found that the articles had been instigated by the petitioning shareholder.

"On motion to commit the publisher of the newspaper for contempt of court, he was ordered to pay a fine of £50 and costs."

Per North, J.—"No one can read the paragraphs that appeared in the *Star* previously to the presentation of the petition without seeing that the editor was put in motion by the applicant, and that he was not expressing the opinion of an impartial newspaper, but was taking a part which he knew to be that of one side against the other When with notice that the petition had been presented, the newspaper deliberately took one side in the controversy, and took on itself to foretell what the result would be, in my opinion, there was a gross contempt of court. It was doing what might interfere with the course of justice." *Roach vs. Hall*, 2 Atk. 469. Cited.

In re Crown Bank (1890), L. R., 44 C. D. 634.

"Where a company has ceased to carry on its proper business, but carries on a business *ultra vires*, a shareholder is not confined to a remedy by injunction, but he is entitled to have the company wound up."

Cases cited.

(2). *In re New Gold Coast Explor. Co.* (1901), 1 Ch. 860.

"In a voluntary winding up, a shareholder took out a summons on behalf of himself, and the other shareholders of the company asking for the removal of the voluntary liquidator from office, and in support filed an affidavit stating what he alleged to be the facts justifying the application. Before the summons came on for hearing he issued a circular to the other shareholders, in substance repeating what he had stated in the affidavit, and asking the shareholders to support his application. The liquidator then served notice of motion for an injunction to restrain the issuing of the circular or any other like document on the ground that it was a contempt of court:—

"*Held*, that the circular could not in any way interfere with or prejudice the due trial of the matter, and was not a contempt of court, and that the liquidator's application must be dismissed.

"*Semble*, that *Coats vs. Chadwick* (1894), 1 Ch. 347, so far as it decided that the plaintiff had been guilty of contempt, and *in re Crown Bank* (cited *supra*), were not rightly decided."

In *Coats vs. Chadwick*, Chitty, J., restrained the issuing of a circular discussing the merits of pending proceedings.

In *Bowden vs. Russell* (1877), 46 L. J. (Ch.) 414, held that circulating copies of a pleading, reflecting on the other side, amongst persons who are not parties to the proceedings, is a contempt of court.

See also *in re General Exchange Bank* (1866), 14 L. T. 582, and *Kilcat vs. Sharp* (1882), 48 L. T. 64.

Contra:—*Plating Co. vs. Farquharson* (1881), 17 Ch. D. 49. *Reg. vs. Payne* (1896), 1 Q. B. 577.

It must be noted, however, that in *re Gold Coast Explor. Co.*, the circular was addressed to shareholders by a shareholder-petitioner. They were interested to know what he thought and what he intended to do. In *Bowden vs. Winding-Up and Dissolution Final*.

(1) *Coxon vs. Gorst* (1891), L. R., 2 Ch. 73.

"After a company has been wound up under a compulsory order and dissolved (under the English Companies Act, 1862, section 111), a creditor commenced an action against the late directors and official liquidator, seeking to make the directors liable for the alleged payment of dividends out of capital while the company was a going concern, or, at any rate for the dividends received by themselves, but not alleging fraud:—

"*Held*, on motion to strike out the statement of claim on the ground that it disclosed no reasonable cause of action, that the dissolution was, in the absence of any fraud being alleged, an absolute bar to the action."

Cases cited.

In re Pavy's Patent Felted Fabric Co., Ltd. (1875), 24 Weekly Reporter, 91.

"A petition by small creditors for the winding up of a company was supported by other creditors for sums amounting to £20,000. The company admitted insolvency, and it was not suggested that the business could be carried on. The petition was, however, opposed by a shareholder who offered to pay the petitioner's debt:

"*Held*, that the order for winding up must be made.

"*Seemle*, that where a company is admittedly insolvent, a shareholder cannot stop a creditor's petition to wind up the company by paying off the petitioner's claim."

(2). *In re London vs. Caledonian Marine Insurance Co.* (1878), L. P. XI. Ch. D. 140.

"The court has no jurisdiction to make an order for winding up a company which has been voluntarily wound up and dissolved under sections 142 and 143 of the (Eng.) Companies Act, 1862, unless the dissolution can be impeached on the ground of fraud."

In re Pinto Silver Mining Co., 8 Ch. D. 273. approved and followed.

Re M. A. Halladay Co., 7 O. W. N. 321.

Discretion—refusal—assignment in trust for creditors.

Re Heyes Bros., 8 O. W. N. 390.

Petitions for by creditor—no opposition by other creditors—refusal of company's request for delay—discretion.

Re Can Fibre Wood & Mfg. Co., Ltd., 24 O. W. R. 635.

Conduct of proceedings—several petitions—creditor or shareholder.

Re South Eastern Corporation, Ltd., 8 A. L. R. 460; 23 D. L. R. 724.

The onus is on those opposing a creditor's application for a winding-up order, where the statutory presumption of the company's insolvency arises, to prove that there is no reasonable possibility of any benefit accruing to the applicant and other unsecured creditors from the winding up.

Re Hough Lithographing Co., 8 O. W. N. 377.

Petition for order under Dominion Winding-Up Act after liquidation begun but not completed under Ontario Companies Act—interest of unsecured creditors—investigation of stock subscriptions—costs.

Re Norwalk Mining Co., 9 O. W. N. 41.

Winding up—directors—misfeasance—purchase of mining property from director—payment by allotment of shares—prospectus—absence of concealment and fraud—over issue of shares—sale at a discount—no loss sustained—breach of duty.

Fortin vs. Dorchester Electric Co., 48 Que. S. C. 258.

Upon application to have a joint stock company wound up, the court grants the order only if it believes it just and equitable for all the interests concerned. The discretionary powers of the court in such a matter are very wide. The winding up of a company being made especially and above all in the interest of the creditors, the judge should, as a rule, when considering the advisability of the winding up, conform to their views and exercise his discretion in their favour if their interests came in conflict with those of the shareholders.

Re Ocean Falls Co., 13 D. L. R. 265.

When opposed by a large proportion of company creditors a winding-up order will be refused, where, if granted, the chances of the creditors obtaining payment would be diminished; or where, by reason of the property of the company being held by a receiver for its debenture holders, there would be nothing on which the order could operate.

Re Heyes Bros., 8 O. W. N. 390.

No opposition by other creditors—refusal of company's request for delay—discretion.

Re Hamilton Ideal Mfg. Co., 23 D. L. R. 640, 7 O. W. N. 254.

Inspection of affairs and management—inspector's report—meetings of shareholders to consider. Companies' Act, R. S. O., 1914, c. 178, s. 126.

Fortin vs. Dorchester Elec. Co. (1915), 48 Que. S. C. 258.

The winding up of a company will only be ordered where it is considered in the best interests of all the creditors. His discretionary power is very extended. The winding up of a company should be principally and before all in the interest of the creditors, and their interests should supervene over those of the shareholders where there is a conflict between the two.

Re Olympia Co. (1915), 32 W. L. R. 539, 628.

Where petitioners, knowing their application will be opposed by a large majority of the creditors, apply for an order for the winding up of a company already in assignment, and it is refused, they must pay one set of costs to the company or its assignee, one to the creditors, and a third set to the contributories, if any.

15. Proceedings May be Adjourned.—If the company opposes the application, on the ground that it has not become insolvent or that its suspension or default was only temporary, and was not caused by any deficiency in its assets or that the capital stock is not impaired to the extent aforesaid, or that such impairment does not endanger the capacity of the company to pay its debts in full, or that there is a probability that the lost capital will be restored

within a year or within a reasonable time thereafter, and shows reasonable cause for believing that such opposition is well founded, the court, in its discretion, may, from time to time adjourn proceedings upon such application for a time not exceeding six months from the date of the application, and may order an accountant, or other person to inquire into the affairs of the company, and to report thereon within a period not exceeding thirty days from the date of such order. R. S., c. 129, s. 10; 52 V., c. 32, s. 8.

Re Manitoba Commission Co., Ltd., 22 Man. L. R. 268, 2 D. L. R. 1.

If under section 15 the company opposes the application, the court may order an inquiry by an accountant—where there is a *prima facie* case of insolvency.

Re Manitoba Commission Co., Ltd., 2 D. L. R. 1., 22 Man. L. R., 268.

An order for an audit under this section will not be made unless the petitioners have made a *prima facie* case of insolvency such as would justify a winding-up order.

See section 14.

16. Duty of Company and its Officers if Inquiry is Ordered.—Upon the service of the company of an order made under the last preceding section, for an inquiry into the affairs of the company, the president, directors, officers and employees of the company, and every other person, shall respectively exhibit to the accountant or other person named for the purpose of making such inquiry, the books of account of the company, and all inventories, papers and vouchers referring to the business of the company or of any person therewith, which are in his or their possession, custody or control, respectively; and they shall also respectively give all such information as is required by such accountant or other person as aforesaid, in order to form a just estimate of the affairs of the company. R. S., c. 129, s. 11.

17. Power of the Court Upon Report of Inquiry.—Upon receiving the report of the accountant or person ordered to inquire into the affairs of the company, and after hearing such shareholders or creditors of the company as desire to be heard thereon, the court may either refuse the application or make the winding-up order. R. S., c. 129, s. 12.

STAYING PROCEEDINGS.

18. Actions Against Company may be Stayed.—The court may, upon the application of the company, or of any creditor or contributory, at any time after the presentation of a petition for a winding-up order, and before making the order, restrain further proceedings in any action, suit or proceeding against the company, upon such terms as the court thinks fit. R. S., c. 129, s. 13.

A company incorporated by Imperial charter went into liquidation in England, and afterwards a winding-up order was obtained

in Ontario. P., a creditor of the company, domiciled in Ontario, having brought an action against the company, in the State of Michigan, with the object of attaching a steamer belonging to the company, which was wintering there, an *ex parte* injunction was obtained in Ontario, restraining him from proceeding with the action. On motion to make the injunction perpetual, it appeared that both the secretary and the managing director of the company had repeatedly assured P. that the company was perfectly solvent, and that but for these representations he would have brought action before the date of the winding-up order. It was held that, having postponed his action at the request of the company, he was entitled to whatever preference he could obtain by his action, and the motion to continue the injunction was refused. *In re Lake Superior Native Copper Company, Limited. Re Plummer* (1885), 9 O. R. 277. But see in *re Oriental Inland Steam Co., ex parte Scinde Railway Co.* (1874), L. R. 9 Ch. 557. And *Moore vs. Anglo-Italian Bank* (1879), L. R., 10 C. D., 681.

See also (as to effect of a creditor postponing action at request of company), *Ex parte Railway Steel and Plant Co., in re Taylor* (1878), 8 C. D. 183. An action taken by a creditor to recover against the assets of an insolvent company in a foreign country may be restrained. *In re South Eastern of Portugal Railway Company*, 17 W. R. 982. And see *Robillard vs. Blanchet* (1901), 19 S. C. 383.

There is jurisdiction under this section to restrain proceedings against a company, even in actions outside the ordinary territorial jurisdiction of the court; and the enforcing of an execution is a proceeding within this section:—*Held*, therefore, that there was jurisdiction in the High Court of Justice of Ontario to make an order staying proceedings under an execution in the hands of the sheriff of a county in the Province of New Brunswick, as had been done in this case. But the sheriff, having, notwithstanding, proceeded with the sale under the execution against the lands of the company, and executed a deed of the same to the purchaser:—*Held*, that there was no jurisdiction in the court under the Winding-Up Act to make an order summarily declaring the sale void.

Re Tobique Gypsum Company, Costigan vs. Langley, 6 O. L. R. 515.

Re Canada Cork Co. (1905), Meredith C. J. (Ontario). *Parker and Clarke* state at p. 390 that the holding was that the court will not grant such an order until evidence is produced shewing that the foreign court has been advised of the winding-up proceedings and has itself refused to stay the proceedings pending before it.

See section 22.

Mowat vs. Dom. Trust Co., 8 S. L. R. 404.

The B. C. Court having made the winding-up order in a Dominion Court *ad hoc*, and that, generally speaking, a Provincial Court should not act unless at the request of the Dominion Court, but, if requested, it should in every way assist such Dominion Court. That the only grounds justifying a Provincial Court acting in the first instance would be matters of urgency, and that the facts in the present case do not disclose such grounds.

Westminster vs. Upward, 24 Sol. J. 690, is authority for the principle that the application to restrain proceedings in a foreign action should be made to the court before whom the winding up is pending.

Re Toronto Wood & Shingle Co. (1894), 30 C. L. T. 353.

It is the intention of the Act that one court should control all

the estate of an insolvent company; to settle all claims of debt, privilege, mortgage, lien or right of property upon, in or to any effects or property of such company in the simplest and least expensive way, and to distribute its assets among its creditors in the most expeditious manner, and not to have proceedings delayed or impeded by or dependent upon outside or expensive litigation in other courts.

19. Court may Stay Winding-Up Proceedings.—The court may, upon the application of any creditor or contributory, at any time after the winding-up order is made, and upon proof, to the satisfaction of the court, that all proceedings in relation to the winding up ought to be stayed, make an order staying the same, either altogether or for a limited time on such terms and subject to such conditions as the court thinks fit. R. S., c. 129, s. 18.

Pontbriand Co. vs. Cosky, 14 Que. P. R. 19.

A winding-up order may be granted during vacation.

Pontbriand Co. vs. Cosky, 14 Que. P. R. 19.

An order for winding up a company, being susceptible of appeal or opposition, cannot be set aside for irregularities by requête civile. A winding-up order made by a Superior Court judge cannot be set aside by another judge of the same court, but may be by the court of Kings Bench.

Sicbe Light Co. vs. Fortin, 13 Que. P. R. 235.

Proceedings for setting aside an order for winding up a company should be by petition, which need not be previously authorized by the court.

Re Installations, Limited, 26 W. L. R. 254, 14 D. L. R. 679.

Where during the pendency of interpleader proceedings between execution creditors of the company and claimants of the goods seized, the company consents to a winding-up order which is made without notice to execution creditors, the latter may, on a motion to stay proceedings under the winding-up order, be given leave to proceed with the interpleader issue upon which the winding-up order had operated as a stay, and to apply again for the further disposal of the rights of the parties after the trial of the issue.

See:

Re Central Bank, Yorke's Case, 15 Ont. R. 625. Cited under section 2 (g).

Deacon vs. Kemp Manure Spreader Company, 15 O. L. R. 149 (D. C.).

Where a winding-up order under the Ontario Winding-Up Act is made in violation of the provisions of the statute, or is obtained by fraud or misrepresentation, or is otherwise open to attack, any shareholder prejudicially affected may obtain redress, either by direct application to the County Court Judge if the order has been made by him *ex parte*, or if made by him after notice then by way of appeal to the Court of Appeal. The High Court of Justice for Ontario has no jurisdiction to intervene and set aside or vacate or declare invalid what has been done by the County Court Judge under the Ontario Winding-Up Act. R. S. O. 1897, Ch. 222. See section 101.

Sicbe Light Co. vs. Fortin, 13 Que. P. R. 235.

Proceedings for setting aside an order for winding up a company should be by petition, which need not be previously authorized by the court.

Re Manitoba Commission Co., 19 W. L. R. 893.

The affiant of an affidavit in opposition to a winding-up petition is, under the Manitoba Winding-Up Act and Rules, subject to cross-examination upon his affidavit, and for examination in order that his depositions might be used upon the hearing of the petition.

In re Telecripitor Syndicate, Ltd. (1903), 2 Ch. 174.

"In the exercise of its jurisdiction with reference to staying proceedings under an order for the winding up of a company, the court should, so far as possible, act upon the principles which are applicable in exercising jurisdiction to rescind a receiving order or annul an adjudication in bankruptcy against an individual—in which case the court refuses to act upon the mere assent of the creditors in the matter, and considers not only whether what is proposed is for the benefit of the creditors, but also whether the rescission or annulment will be conducive or detrimental to commercial morality and to the interests of the public at large—in other words, if there is evidence of misfeasance of directors, of undisclosed agreements or breaches of statutory duty, the order will not be stayed."

While the section allows this application to be made only by "any creditor or contributory," *Teetzel, J.*, in an unreported case, *in re Boehmer Erb Co.* (Toronto, 1907), granted a petition under the section, made by the company, upon it being shown that the company would immediately meet its liabilities.

In an unreported case, *in re Volcanic Reef Co.*, Toronto, on October 16, 1906, Judge Mabey issued an order under the section upon the demand of the only existing creditor, all the other creditors having been paid.

Security for costs.

Re Rainey Lake Lumber Co. (1886), 11 Ont. P. R. 314.

"One, S., a contributory of the company, petitioning to set aside a winding-up order, was required to give security for the costs of the company and a creditor opposing the petition, where it appeared that S., although he had a nominal interest as the holder of stock upon which nothing was paid, was not in such a position that anything would be made out of him upon execution, and was petitioning merely in the interest of other persons who lived out of the jurisdiction, and who had influenced him as to costs."

Re Standard Cobalt Co. (1910), 16 O. W. R. p. 501, 1 O. W. N. 875.

One creditor obtained a winding-up order. Other creditors applied to have the order set aside on the grounds of fraud and prejudice. Middleton, J., refused the application, holding that the order was in effect a judgment of the court directing the company's assets to be realized and applied *pro rata* in discharge of its obligations, and no other creditor could have any greater or higher right; that the order could not defraud any creditor nor in any way prejudice him; that the application was without precedent and unwarranted by the practice; that the court had no power on this application to appoint a receiver; that application for leave to intervene should be made to the referee. Motion dismissed with costs.

Pontbriand Co. vs. Cosky, 14 Que. P. R. 19.

On a motion to set aside a winding-up order the applicant cannot, by tierce opposition, attack the legality of proceedings prior to its issue.

EFFECT OF WINDING-UP ORDER.

20. Company to Cease Business.—The company, from the time of the making of the winding-up order shall cease to carry on its business, except in so far as is, in the opinion of the liquidator, required for the beneficial winding up thereof; but the corporate state and all the corporate powers of the company, notwithstanding it is otherwise provided by the Act, charter or instrument of incorporation, shall continue until the affairs of the company are wound up. R. S., c. 129, s. 15.

The effect of a winding-up order is not in any way to cut down the rights of a lessee of the property of the company with option to purchase. Company held liable in damages by reason of the liquidator's selling the property without giving the lessee an opportunity to exercise his option. *McCarter vs. York County Loan Co.*, 1907, 14 O. L. R. 420.

Bank of Hamilton vs. Kramer-Irwin Co., 1 D. L. R. 475.

The winding-up order takes effect retroactively as to the date of service of notice of the petition.

Bank of Hamilton vs. Kramer-Irwin Co., 20 O. W. R. 999, 1 D. L. R. 475.

The winding-up order is effective retroactively to the service of the winding up petition. A liquidator must accordingly be authorized before proceeding to set aside a consent judgment obtained in the interval.

Bank of Hamilton vs. Kramer-Irwin Co., 1 D. L. R. 475, 3 O. W. N. 603.

The effect of a winding-up order is retroactive to date of service of petition.

Stevenson vs. McPhail (1907), 17 Que. K. B. 119.

A company constituted by Federal Charter continues to exist after it is put in liquidation, and after the appointment of a liquidator, until its affairs are finally wound up. Its legal rights whether by way of action or defence, during this interval, must be exercised in its own name. But where it is necessary to attack or to defend, its rights, in the interest of creditors, this must be done in the name of the liquidator who represents the creditors.

Scott vs. Hyde (Que.), 18 K. B. 138; 10 Que. P. R. 164.

Held:—Confirming judgment in *re Great Northern Construction Co.*—*Hyde vs. Scott*, Que. R., 34 S. C. 432. "The general rule that a winding-up order made against a company, after appearance and contestation by it, is conclusive against the shareholders, does not apply where the ground taken is that the company was not subject to the Winding-Up Act, or that the petition for the order had not been served upon it, and was a fraudulent abuse of the process of the court.

The Mersey Steel & Iron Co., Ltd. vs. Naylor (1884), 9 A. C. 434.

Held:—"That section 10 of the Judicature Act, 1875, imported into the winding up of companies the rules as to set-off in bankruptcy; that the respondents were entitled, after the winding-up order was made, to set off damages for non-delivery against the payments due from them, and to counter-claim for damages in this action.

21. Transfer of Shares Void.—All transfers of shares, except transfers made to or with the sanction of the liquidator, under the authority of the court, and every alteration in the status of the members of the company, after the commencement of such winding up, shall be void. R. S., c. 129, s. 15.

In re Onward Building Society (1891), 2 Q. B. 463.

"In the case of a sale and transfer of shares in a company after a compulsory winding-up order, the transferee is not entitled to be registered as owner of the shares without the sanction of the court the court has power to order the notification of the register of members by the insertion of such transferee's name; but the exercise of that power is discretionary, and such an order ought not to be made except on strong grounds.

"After an order had been made for compulsorily winding up a building society, a company called the '*Assets Realization Company*' bought up a number of shares in the society, which were transferred to their nominees. It appeared that there would be a surplus of assets in the winding up; and one of the transferees applied for a rectification of the register by the insertion of his name as the owner of shares, with a view to obtaining the right to vote at meetings held in the winding up. The court refused the application on the ground that no sufficient reason was shewn for it."

Cases cited.

Redfern et al. vs. Polson et al. (1894), 25 Ont. R. 321. (Appeal). "The shareholders of a company sold and transferred part of their property, and also contracted that they would, within a year, transfer their charter by assigning all their stock to the purchaser's nominee. Part of the purchase money was paid at once, but the purchaser did not nominate a person to whom the shares should be transferred. After an order for the winding up of the company had been made, the liquidators brought this action for the balance of the purchase money. *Held*, that they were entitled to recover." Judgment of lower court confirmed.

Cases cited.

In re Cordova Union Gold Co. (1891), 2 Ch. 580.

"A company was formed for the purpose of carrying into effect a contract for the purchase of the business of an existing company. Under this contract (which, in due course, became binding on the new company) shareholders in the old company were entitled to shares in the new company, and payments made in respect of such shares were to be made by certain specified instalments. Several shareholders in the old company accepted shares in the new company under the contract. Before the periods fixed for payment of some of the instalments had arrived, the new company was wound up:—

Held, that the contract for payment by instalments was determined by the winding up, and that . . . the liquidator was entitled to make an immediate call for the amount remaining unpaid in respect of shares.

22. After Winding-Up Order, Actions Against Company Stayed.—After the winding-up order is made, no suit, action or other proceeding shall be proceeded with or commenced against the company, except with the leave of the court and subject to such terms as the court imposes. R. S., c. 129, s. 16.

Section 4 of 30 and 31 Vic., c. 209, enacted that from the time

it came into force "no actions, suits, executions, attachments or other proceedings against the L. C. and D. Ry. Company should be continued or commenced during a certain time, except by leave of the Court of Chancery. *Held*, that the taxation of costs in a suit which had terminated before the passing of the Act, was a "proceeding," and could not be commenced without the leave specified by the Act, *Reg. vs. London, Chatham & Dover Ry. Co.* (1868), L. R., 3 Q. B. 170.

In an English case it was held under a section in the English Winding-Up Act, of 1862 (section 87), similar to section 16, that where a creditor had delayed his action at the request of the secretary of the company, he was entitled in priority to other creditors to the benefit of a judgment obtained after the making of the winding-up order. Per *Hall V. C.* in *Ex parte Railway Steel & Plant Co. In re Taylor* (1879), 8 C. D. 183. See also cases cited under section 13, *supra*.

Previous to an order for the winding up of the company being granted, an action had been brought by the company against a shareholder for unpaid calls, and the shareholder had delivered a defence and counterclaim praying that his application for shares should be cancelled on the ground of misrepresentation and of false and fraudulent statements in the prospectus:—*Held*, that the shareholder could have in the winding-up proceedings all the relief that he claimed by his defence and counterclaim; and his application for leave to proceed in the action notwithstanding the winding-up order was therefore refused, but leave to apply again was reserved. Dictum of Strong, C. J., in *re Hess Manufacturing Co.*, 23 Can. S. C. R. 644, at pp. 665-6, explained. Leave to appeal from the order of a judge in court affirming the dismissal by the referee of the application for leave to proceed was refused.

In re Pakenhām Pork Packing Co., 40 C. L. J. 35.

Goldstein & Creehan vs. Vancouver Timber and Trading Co., 21 W. L. R. 561, 4 D. L. R. 172.

Permission to carry on a proceeding begun by a company may be granted the liquidator thereof under order XVII. on an *ex parte* application without the month's notice required by rule 973 of the B. C. Court Rules, 1906.

Re Transcontinental Townsite Co., 25 Man. L. R. 193; 21 D. L. R. 291.

The discretion of the court under section 22 is properly exercised by granting leave to sue a company in liquidation for specific performance of an agreement for exchange of lands or in default that the agreement be declared cancelled, so that plaintiff may recover his own lands of which the company in liquidation has been allowed to take possession.

Re Winnipeg & Western Development Co. (1916), 33 W. L. R. 749.

Where a mortgagee commenced sale proceedings and served a preliminary notice of exercising power of sale and proceeded further after an order for the winding up of the mortgagor company was granted, and subsequently applied for, and obtained an order from the Master authorizing the continuation of the proceedings upon terms including the payment of costs, it was held, that it was not necessary to put the mortgagees to commence fresh proceedings as such leave should be given, but only upon the payment of the costs of the liquidator in the proceedings which the mortgagees had taken without authority.

Re Martin International Trap Rock Co., Ltd., 8 O. W. N. 599.

Claim of mortgagee for bondholders—application for leave to proceed to enforce, notwithstanding winding-up order—Winding-Up Act, section 22—discretion—delay to enable liquidator to sell assets—costs.

Re Martin International Trap Rock Co., 8 O. W. N. 599.

Application for leave to proceed to enforce, notwithstanding winding-up order—discretion—delay to enable liquidator to sell assets—Winding-Up Act, section 22.

Re Motor Steel Cleaning Co., 8 O. W. N. 233.

Sale of machinery to company before winding up property not to pass till payment—claims of unpaid creditors to possession and ownership of machinery—order of judge on appeal from ruling of magistrate—refusal of leave for further appeal.

Fred Lewis Co. vs. Holmes, 8 S. L. R. 185; 31 W. L. R. 918.

Section 22 of the Winding-Up Act (Sask.) which prohibits any action or proceedings against the company after the winding-up order unless with leave of the court, does not apply to an application to set aside a concurrent writ and service.

Re Jasper Liquor and Winding-Up Act, 25 D. L. R. 84.

Under sub-section 7 of section 18 of the Companies Winding-Up Ordinance, 1903 (Alta.), a distress for rent, after the commencement of the winding-up proceedings, cannot be had without leave of the court.

Re Jasper Liquor Co., 23 D. L. R. 41; 32 W. L. R. 213.

A landlord has no preferred claim for past due rent distrained for where the distress lien is not in effect at the date of the commencement of the winding-up proceedings. (Affirmed in 25 D. L. R. 84).

Pukulski vs. Jardine; Perryman vs. Jardine, 26 O. L. R. 323, 5 D. L. R. 242.

Section 22 does not prevent a sheriff from making a return of *nulla bona* to a writ of execution issued prior to the winding-up order.

Royal Paper Box Co. vs. Can. Cement Construction Co., 48 Que. S. C. 287.

A joint stock company, which is placed in liquidation while an action against it is pending, cannot afterwards take any proceedings nor demand the dismissal of the action except through the liquidator authorized by the judge.

Sicbe Light Co. vs. Fortin, 13 Que. P. R. 235.

Proceedings for setting aside an order for winding up a company should be by petition, which need not be previously authorized by the courts.

Re Imperial Paper Mills of Canada, Diehl vs. Carritt, 7 O. W. N. 630.

Receivership—advances made by bank upon security of timber—payment of crown dues by bank—claims for repayment out of assets of bank in priority to claim of mortgagee—obligation of company not binding on mortgagee—preferential lien of crown—validity against secured creditors—subrogation—salvage—court in control of fund—equitable administration.

Bank of Hamilton vs. Kramer-Irwin Co., 20 O. W. R. 999, 1 D. L. R. 975.

A liquidator must obtain leave before instituting proceedings

to set aside a consent judgment obtained against the company between service of notice of motion for winding up and the pronouncement of the order on the ground that the winding-up order took effect as from the date of service of the notice, and that the solicitors who had given the consent had, therefore, no authority to bind the company.

Re Fashion Shop, 33 O. L. R. 253; 21 D. L. R. 478.

On an order being made for the winding-up of the company under the Winding-Up Act, after an assignment made by the company under the Assignments and Preferences Act, R. S. O. 1914, Ch. 134, the liquidator takes the assets subject to the preferential lien of the landlord under section 38 of the Landlord and Tenant Act, R. S. O. 1914, Ch. 155, for rent in arrears whether distrained for or not, upon goods available for distress, limited, however, to the rent for the period of one year prior to the assignment and the three months following.

Stewart vs. Lepage, 24 D. L. R. 554.

Where, in pursuance of the Winding-Up Act, 1906, a liquidator is appointed to take charge of the assets of an insolvent trust company, the holders of trust certificates, the funds and securities of which are by statute required to be separately kept from mixing with the general assets of the company, are regarded as *cestius que trust* and not as creditors, and are not required to obtain leave of the court having charge of the winding-up order section 22, for the purpose of proceeding under a Provincial Trustee Act to preserve the administration of the trust.

Organ vs. Gamache, O. R., 22 K. B. 389.

An order for winding up a company suspends the rights of the creditors. All the property of every kind passes into the possession and under the control of the liquidator, who alone can dispose of it in the manner prescribed by the Act. Hence, an opposition by the liquidator to set aside a pending seizure by a creditor cannot be dismissed as being frivolous. An adjournment for a fortnight of the hearing of an application to dismiss an opposition to the sale by the sheriff of immoveables seized, and pending the action of the liquidators who must wind up the affairs of the company without delay followed by a second adjournment for a fortnight and a third for four days, does not justify the dismissal of the opposition as frivolous and vexatious, when, in the interval, a resolution of the inspectors to the effect that liquidation within the time is impossible has been filed.

Re East Can. Power & Pulp Co., 14 Que. P. R. 350.

If a *saisie revendication* is issued in the district of Montreal against a company with headquarters in the district of Saguenay and pending the proceedings, the company is put in liquidation, the court will, on application therefor, order that the proceedings be continued in the district of Montreal where all the witnesses reside, where considerable expense has already been incurred, where the liquidator lives and where the proceedings in liquidation will be carried on. The plaintiff should make the liquidator a party to the action and serve on him all the proceedings already taken within the delays provided for ordinary service.

Re Alexander Dunbar & Sons Co., 9 E. L. R. 217 (N. B.)

Rights of unsecured creditor. Right to winding-up order.

Re Cushing Sulphite Fibre Co. (1905), 38 N. B. R. 581.

By section 16 of the Winding-Up Act (Rev. Stat. Can. ch. 129, now R. S. C. cap. 144), proceedings by a mortgagee under a decree

of foreclosure of the company's premises is stayed, but the mortgagee has the absolute right to have leave to proceed unless special circumstances make it inequitable for him to do so. The liquidators have no equity to have the conduct of the sale under foreclosure proceedings, and on order made at their instance by the judge directing the winding-up proceedings, postponing the sale and directing the referee as to the advertising and fixing a subsequent date for the sale is bad. See section 101.

Ross vs. Perras, 5 Que. S. C. 470.

Held:—The liquidator of a company in liquidation cannot institute proceedings against the company's debtors except upon the authorization of the court previously given upon such notice to creditors, contributories, shareholders or members as the court may prescribe, and it does not suffice to demand such authorization merely in the proceeding instituted against such debtors.

The fact that a company is in liquidation does not give rise to a *reprise d'instance* by the liquidator in actions pending in the name of the company, which retains its status as a corporation, and may still sue in its corporate name.

Pukulski vs. Jardine; Perryman vs. Jardine, 5 D. L. R. 242, 26 O. L. R. 323.

The section (22) does not prevent a sheriff from making a return of *nulla bona* to a writ of execution issued prior to the winding-up order.

Goldstein & Creehan vs. Vancouver Timber & Trading Co., 4 D. L. R. 172, 21 W. L. R. 561.

Permission to carry on a proceeding begun by a company may be granted the liquidator thereof under order XVII. on an *ex parte* application, without the month's notice required by rule 973 of the B. C. Court Rules, 1906.

Baxter vs. Central Bank of Canada, 20 O. R. 214.

The High Court of Justice of Ontario having made an order for the winding up of a company, there is jurisdiction in that court to restrain an action commenced in a Quebec Court against the company. The court in such case acts as a Federal Court, and a Provincial Court cannot interfere with its proceedings.

But—the court will not grant such an order until evidence is produced shewing that the foreign court has been advised of the winding-up proceedings, and has itself refused to stay the proceedings pending before it. *Re Canada Cork Co.*, Meredith, C. J., 1905 unreported.

Re Rio Grande Co., 5 C. D. 282.

Where it is desired to commence or continue proceedings against other parties, to which the company is a necessary party, leave will be given.

Re Ardandhu, 12 A. C. 256.

Where a plaintiff obtains leave to proceed and afterwards discontinues the action, he is not debarred from claiming in winding up.

Re Kurtz vs. McLean, Toronto, January 24, 1908, Mulock, J. The application is properly made to a judge in chambers.

Where goods were sold to a company before the winding-up under a lien agreement (no property passing until payment in full) and the liquidator refused to give up the goods to the vendors, leave was refused the vendors to bring an action against the

liquidator for recovery of the goods. They were directed to proceed under section 133.

Re Raven Lake Portland Cement Co., National Trusts and Guarantee Co., 24 O. L. R. 286 (C. A.)

Sale of assets by liquidators; claim by mortgagees to proceeds or for conversion.

See case cited more fully under section 133.

Re McEwan vs. London, etc., Bank. 15 W. R. 245.

Appeal may be taken from judgment refusing permission to proceed. But see section 101, etc., of the Act.

Lloyd vs. Lloyd, 6 C. D. 339.

A secured creditor will not be restrained from enforcing his security.

See *Currie vs. Consolidated Kent Collieries* (1906), 1 K. B. 134.

Re Lake Winnipeg, 7 W. L. R. 602.

Leave was given in Manitoba to a servant of the company to sue the company for wages so that he could sue the directors under section 276 of the Manitoba Companies Act, after a return of *nulla bond*.

Re Wanzer Limited (1891), 1 Ch. 305.

A creditor who proceeds without leave will be ordered to pay the costs even if on an application to stay the proceedings, the court gives leave to proceed.

Re Lake Superior Native Copper Co., 9 O. R. 277.

After an order had been obtained winding up a foreign company doing business in Ontario, P., a resident of Ontario, brought an action against the company in the State of Michigan with a view of attaching a steamer which was the property of the company. It was shewn that representations that the company was solvent had been made by the secretary and its managing director to P., and P. swore that otherwise he would have sued before the making of the order. Injunction to restrain P.'s action. *Held*, that this case is not distinguishable in principle from *ex parte Ry. Steel & Plant Co., in re Taylor*, 8 Chy. Div. 183, and the court declined to continue the injunction.

It was stated that when the postponement of proceedings in an action is made in pursuance of a request made on behalf of the company for time the creditor was entitled to the benefit of his judgment in priority to other creditors, and that the section 20 of 45 V., cap. 23 D. (section 22 of our Act), does not make the action absolutely void, but leaves discretion in the court, and under the circumstances of this case, the creditor should be preferred.

But see *Keating vs. Graham*, 26 O. R. 361 (p. 370), and sections 22, 23, 84.

Keating vs. Graham, 26 O. R. 361 (see p. 370).

A judgment obtained against a company subsequent to the making of a winding-up order has no force or effect, and in fact, is absolutely null and void. *Quacra*, whether an order vacating such a judgment is necessary.

Bank of Hamilton vs. Kramer-Irwin Co., 1 D. L. R. 475, 3 O. W. N. 603.

The liquidator must obtain leave to proceed to set aside a consent judgment obtained against the company between the service of notice of motion and the granting of the winding-up order.

Ruffer vs. Rattray & Sons, Ltd. (1911), 39 (Que.), S. C. 245. Lemieux, J.

"The disposition of the Winding-Up Act which forbids the commencement or carrying on of an action, without the permission of the court against a company in liquidation, is imperative and entails absolute nullity.

"The lack of judicial authorization cannot be remedied by a petition to that effect after the action has issued.

"For the same reason, a defence filed by the liquidator, without permission of the court, must be rejected with costs against the liquidator personally."

See cases cited under section 34.

Cardiff Coal & Coke Co. vs. Norton. L. R., 2 Ch. 405.

Cited under section 4—the proper mode of recovering assets is not by action but under the Winding-Up Act.

In re Cuthbert Lead Smelting Co. (1866), 35 Beav. 384.

A mortgagee moved for leave to institute a foreclosure suit against the company.

Per The Master of The Rolls:—"If I were to grant this application, then, in every case of a mortgage of a company's property, I ought, during its winding up, to allow a mortgagee to file a bill, and must also extend the like power to judgment creditors of the company. If I were to do so, the effect would be that I should be putting the estate of the company to a considerable expense, to enable the mortgagee to obtain an order, which I can make in Chambers. It is only necessary to know what the rights of the mortgagee are, and what is proper to be done, and then, on hearing the official liquidator, I might make the order without the necessity of any suit at all I consider that if a mortgagee comes in and asks for payment, I have full authority to deal with his rights. He makes an application in Chambers. . . . The present is an application I cannot grant."

Re The Canada News Syndicate (1909), Q. P. R. 407.

Where an execution has been effected before the order for winding up a company, and the sale of the chattels seized after the winding up-order has been made, the sale will be valid, if no objection was made and no notice of the order for winding up given to the execution creditor.

Blandy vs. Kent, 10 Que. S. C. 255; 6 K. B. 196, confirming Mathieu, J.

Held:—"The liquidator of an insolvent company represents the creditors of the company in actions belonging to creditors generally. Hence the action demanding the nullification of a payment made by a company to a creditor who knew of the company's insolvent condition, being in the nature of an *action Paulienne*, may be instituted by the liquidator.

Titterington vs. Distributors Co. (1906), 8 Ont. W. R., p. 328. Teetzel, J.

"Motion by defendants, the Bank of Hamilton, to rescind an order obtained by plaintiffs allowing this action to proceed, notwithstanding an order for the winding up of the defendant company.

"A winding-up order, with a reference to the master in ordinary, was made after the announcement of the action. On 18th September, plaintiffs, upon notice to the liquidator of the defendant company, but without notice to defendants the Bank of Hamilton,

obtained an order from the chancellor, sitting in chambers, permitting plaintiff to proceed with his action. . . . The Bank of Hamilton claims to be assignees of unpaid calls on the stock in the defendant company subscribed by the plaintiffs and others. The plaintiff sues to set aside his subscription, and urges misrepresentation. . . .

"The bank, as the principal creditors of the insolvent company, and holding assignments of unpaid calls as security for their claim, are chiefly interested in saving time and expense in ascertaining the validity of the stock subscriptions.

"The master in ordinary has all the powers of a High Court Judge in the winding-up proceedings, and disputes between stockholders and the liquidator can be much more cheaply and expeditiously disposed of before him than in an action.

"It seems to me that to entitle a plaintiff to an order allowing him to proceed with an action, he should shew such special or unusual circumstances as make it reasonably clear that the matters in question cannot be satisfactorily dealt with by the tribunal specially provided in the winding-up proceedings. In this case no such special or unusual circumstances are disclosed."

See section 110.

As to special and unusual circumstances see also:—*In re Hermann Loog, Ltd.* (1887), L. R., 36 C. D. 502:—A solicitor commenced an action against the liquidator for his fees and costs out of the estate. An injunction was granted restraining his action, as he could be paid by means merely of an application in the winding up, and was not entitled to attach assets.

Freygang vs. Daveluy, 2 Que. S. C. 505 (1892). Mathieu, J.

Held, the liquidator of a company must be specially authorized to sue a claim of the company, and a general authorization to sue to recover all the assets of the company does not suffice.

Johnston vs. Ewart Company, 31 Que. S. C. 336.

If before a winding-up order, under R. S. C., ch. 129, is made, a suit is brought against a company by a shareholder to have his subscription set aside for fraud, he will be authorized on motion to continue his proceedings after the order has been obtained.

In re Briton Medical vs. General Life Assurance Assoc. (1886), 32 C. D. 503.

After a petition had been presented to wind up, but before an order was granted, summonses were issued at a police court against the company, by a person not interested in the affairs thereof, to recover certain penalties. An injunction to restrain the proceedings was allowed.

In re International Pulp & Paper Co. (1876), 3 C. D. 594.

"The court has jurisdiction, after a winding-up order has been made, to restrain any 'suit, action, or other proceeding' against the company in any part of the United Kingdom.

"Hence, when a company with a registered office in London, and carrying on business in Ireland, had been ordered to be wound up, and proceedings were commenced against it in the Irish Courts by a creditor.

"*Held*, that the court had power to restrain, and injunction allowed."

Re Regina Windmill & Pump Co. 10 W. L. R. 65, 2 Sask., L. R. 32.

Seizure of company's goods before winding-up order made; application to compel sheriff to deliver goods to liquidator.

"The sheriff had seized certain goods of the company before winding-up order made under above ordinance (Companies Winding-Up Ordinance, N. W. T. 1903).

"*Held*:—That the sheriff was right in refusing to hand over said goods to the liquidator, there being no provision for his so doing under above ordinance. If the insolvent estate can be better administered with these goods they may be handed to the liquidator if he will guarantee the sheriff the amount for which he holds them, with costs."

Ruffer vs. Rattray & Sons, Q. R., 39 S. C. 245.

An action brought after the winding-up order is made, must be with permission of judge. The want of such permission cannot be remedied by an application therefor after the institution of the action. Similarly a defence filed by the liquidator without such permission, should be rejected with costs against him personally.

In re Oriental Inland Steam Co. (1874), L. R., 9 Ch. App. 557.

When a company has in this country been ordered to be wound up, judgment creditors who are in this country, and have proved under the winding up, will not be allowed to attach property in India belonging to the company.

Scott vs. Sieman; Murphy vs. Traders Bank, 2 O. W. N. 697. Action for unpaid purchase money.

Clarkson vs. Linden, 2 O. W. N. 564. Leave to sue.

Robillard vs. Blanchet (1901), 19 Que. S. C. 383. Andrews, J. "A suit cannot be entered against liquidators of an estate without leave of the court." Authorities.

Johnston vs. The Ewart Co., Ltd. (1907), 31 Que. S. C. 336. Archibald, J.

"If before a winding-up order, under R. S. C., Ch. 129, is made, a suit is brought against a company by a shareholder to have his subscription set aside for fraud, he will be authorized on motion to continue his proceedings after the order has been obtained." Authorities.

Mutinier vs. Traders' Fire Insurance Co. (1908), 33 Que. S. C. 411. Davidson, J.

An action will lie before the Superior Court of this province against an insurance company that has its chief place of business in Ontario to recover, on a policy issued in that province, a loss by fire of property in the United States, but it must be brought in the district where the company has its chief place of business for this province, and service of process must be effected at such chief place of business.

Cardiff vs. Norton (1867), Eng. Ch. App. Cas. 405.

"When a company is being wound up under the Joint Stock Companies Act, 1856, the proper mode of recovering its assets in the hands of contributories is by a proceeding under the Winding-Up Act, and not by a suit."

Re McEwan vs. London, etc., Bank, 15 W. R. 245.

Except in the case of secured creditors the court, in giving leave to proceed, generally requires an undertaking not to enforce against the company any judgment obtained, without the leave of the court; the object in giving leave is to facilitate the ascertainment of the claimant's rights and not to give him priority over the other creditors.

Re Hall vs. Old Talargoch, etc., 3 C. D. 749.

Where a shareholder has before the commencement of the winding up, brought an action for rescission of contract on the ground of misrepresentation, leave to proceed is generally given.

23. Executions, Etc., Against Company Void.—Every attachment, sequestration, distress or execution put in force against the estates or effects of the company after the making of the winding-up order shall be void. R. S., c. 129, s. 17.

But notwithstanding this section, the court has power under section 16, to give leave to a creditor, to proceed with an execution. *In re London Cotton Co.* (1866), L. R. 2 Eq., 53. But the granting or refusing of such leave is wholly within the discretion of the court. *In re Dimson's Estate Fire Clay Co.* (1874), L. R. 19 Eq. 202. And *In re University Disinfecter Co.* (1875), L. R. 20, Eq. 162. And when a judge before whom the winding-up proceedings are being conducted has, in the exercise of that discretion, given a creditor leave to proceed against the company, an Appellate Court will not disturb his decision. *Thames Plate Glass Co. vs. Land & Sea Telegraph Construction Co.* (1871), L. R. 6 Ch. 643.

A person executing a judgment against the goods of a company in liquidation may be condemned for costs incurred by the liquidator on an opposition to such execution.

The Great Northwestern Telegraph Co. vs. La Compagnie du Journal. Le Monde, 5 Que. P. R. 379.

Re Lundy Granite Co. (1871), 6 Ch. 462; *re Brown* (1881), 18 C. D. 649.

The rent accruing after the winding-up order is made, must be paid in full.

Re New City Constitutional Club, 34 C. D. 646.

The landlord may distrain when the liquidator has no interest in the goods because of prior claims.

Re Diamond Machine Screw Co., 15 April, 1902 (Master in Ordinary) XXX. Can. Law Times, p. 365.

In this case, the collector of taxes issued, after the winding-up order, a distress warrant for the amount of unpaid taxes, which was afterwards withdrawn as a violation of the provisions of the Winding-Up Act. By an arrangement between the respective solicitors for the city and liquidator, the warrant was withdrawn on the condition that the city's position should not be prejudiced.

Subsequently the assets and property of the company were sold, and application is now made *nunc pro tunc* for leave to issue distress.

The case of *Ottawa Porcelain & Carbon Co.*, 31 O. R. 679, decides that a municipal corporation has no right to sue for taxes until it is shewn that the amount cannot be recovered in the special manner provided by the Assessment Act—which is by distress and sale of the personal property assessed.

The city not having issued a distress warrant before liquidation, and applying now for leave to issue one, I think, in view of the special restriction as to a right of action to refuse, the application would have the effect of depriving the city of a right of action which is contingent on the failure of their distress and would, therefore, in effect operate as a denial of justice. And in view of the agreement referred to the proper order will be for the liquidator

to pay the amount of taxes due, but not the penalty claim, which is in the nature of damages, nor the bailiff's fees.

Re Thomas vs. Lionite, 17 C. D. 257.

The landlord may rank as an ordinary creditor though he may be unable to distrain.

Re South Kensington (1881), 17 C. D. 161.

Landlord in a given case may distrain for rent accrued since making of winding-up order.

The Richelieu & Ont. Navigation Co. vs. The Steamer "Imperial et al., Dunlop, J., Exchequer Court of Canada, Quebec Admiralty Division (1908), 35 Que. S. C. 312. Cases cited.

Held:—A lien for damages by collision on a vessel owned by a company in liquidation under the Winding-Up Act of Canada, is enforceable before the Winding-Up Court, and no action *in rem* will lie against the vessel in Admiralty. Nor will leave granted by the Winding-Up Court to proceed *in rem* before the Admiralty Division of the Exchequer Court, confer jurisdiction on the latter to deal with the case.

Fuches vs. Hamilton Tribune, 10 P. R. 497 (Ont.)

The provisional liquidator cannot pay preferential claim of landlord without permission of the court. See sections 5, 84.

Re Oak Pitts Colliery Co., 21 C. D. 322.

The landlord may not, after the winding-up order is made, make distress for rent accrued prior to the beginning of the winding up.

Re Stanhope, 11 C. D. 161.

An execution is "put in force" when the sheriff seizes; an attachment, *e.g.*, of a debt by a garnishee order, is "put in force" when the order *nisi* is served.

Re Printing, etc., Co. 8 C. D. 535; *re Taylor*, 8 C. D. 183.

If the execution has been so put in force, and the execution creditor attempts to evade the provisions of section 84, the liquidator may act under section 22 and obtain an order restraining him, as, *e.g.*, a sale is a proceeding under that section.

Re London & Devon, 12 Eq. 190.

If the sheriff is in possession before the commencement of the winding up, the execution has been "put in force" before, not after, the commencement of the winding up.

Clarke vs. Union Fire Ins. Co., Caston's Case, 10 P. R. 339.

After the winding-up order is made the court will not allow its administration of the assets to be embarrassed by other proceedings affecting the estate administered, and when a creditor is restrained from enforcing his rights at law it is upon the principle of allowing him to bring his legal rights with him into the master's office, which the court substitutes for proceedings at law.

Re Ottawa Porcelain Co., 31 O. R. 679.

A claim for arrears of taxes not executed for before the winding-up order is made, will not be allowed.

See, however, 4 Edw. VII. (Ont.), c. 23, s. 103., s.s. 3.

School Commissioners vs. Montreal Abattoir, 3 M. L. R. (Q. B.), p. 116.

The company's property cannot be sold for taxes after the winding-up order is made.

In re Ideal House Furnishers Ltd., City of Winnipeg's claim, 18 Man. L. R. 650, 10 W. L. R. 717.

Held:—1. A liquidator appointed to wind up a company under c. 144 of the R. S. C. 1906, is not an assignee for the benefit of creditors within the meaning of section 382 of the Winnipeg charter, 1 and 2 Edw. VII., c. 77, so that there is no priority under that section in favour of the city for the business tax imposed upon the company as against other debts. 2. Notwithstanding section 378 of the charter, taxes imposed by the city are not due and payable so as to entitle the city to sue for them until after the preparation of the tax roll. *Chamberlain vs. Turner*, 31 C. P. 460, followed. 3. The assessment of the business tax can be deemed to be made only after notice thereof has been given: *Devaney vs. Dorr*, 4 O. R. 206; and if, at that time, the company assessed is no longer in possession of the premises, and the goods, though still on the premises, are in the hands of a purchaser from the liquidator, there is nothing in the charter which preserves to the city the lien on the goods for the taxes created by section 313, for that section only gives the city a first charge *during the occupancy* on all goods in the premises for which the occupant has been assessed. 4. The statutory right given to the city by section 369 to distrain for such taxes upon any goods and chattels found on the premises in respect of which the taxes have been levied, although such goods and chattels may be the property and in the possession of any other occupant of the premises, is not equivalent to a lien or charge on the goods for such taxes; and where the liquidator of a company assessed for business tax had, prior to the assessment, given up the occupancy of the premises and sold the goods therein, it was *held* that the city had no right to be paid the taxes in full out of the funds in the hands of the liquidator; but had the right to rank with other creditors of the company for the same under section 228 (b) added to the charter by the Act of 1907. 5. Taxes imposed before the winding up of a company has commenced, can only rank as ordinary debts in the absence of statutory lien or charge, but taxes imposed after the commencement of the winding up must be paid in full as part of the expenses of the winding up, if the liquidator has remained in possession and such possession has been "a beneficial occupation." *In re National Arms Co.*, 28 Ch. D. 474. 6. The assessment of the company under the name "Ideal Furniture Co.," instead of "Ideal House Furnishers Ltd.," was sufficient in the circumstances.

Re National Arms, 28 C. D. 474; *re International Marine*, 28 C. D. 470.

Taxes accruing after order is made are expenses of liquidation and must be paid in full.

But see:—

Re Watson, 23 C. D. 500; *re Blazer Fire Lighter* (1895), 1 Ch. 403.

Re Drydocks Co., 39 C. D. 306.

Where a distress for taxes was made after the winding up and was restrained, a municipal corporation has not, under the Act, a privileged claim for taxes.

Re Faulkner Ltd., City of Ottawa's Claim, 34 O. L. R. 536, 25 D. L. R. 780.

Claim of municipal corporation for business tax when preferred—distress.

Re Producers Rock and Gravel Co., Ltd., 25 D. L. R. 709, 14 D. L. R. 289.

As a winding-up order when made in one province, under section 23, is effective throughout the Dominion, an execution and distress put in force against the assets of a company in another province after the making of such order, although done without notice thereof, is void, and the sheriff cannot recover fees, charges or poundage in respect thereto.

Re Lundy Granite Co. (1871), 6 Ch. 462; *re Brown* (1881), 18 C. D. 649.

The rent accruing after the winding-up order is made, must be paid in full.

Re New City Constitutional Club, 34 C. D. 646.

The landlord may distrain when the liquidator has no interest in the goods because of prior claims.

APPOINTMENT OF LIQUIDATORS.

24. Liquidator to be Appointed.—The court, in making the winding-up order, may appoint a liquidator or more than one liquidator of the estate and effects of the company. R. S., c. 129, s. 20.

45 Vic., c. 23, section 24, as amended by 47 Vic., c. 38, section 4; reads:—"The court in making the winding-up order *must* appoint a liquidatorbut no such liquidator shall be appointed unless previous notice be given to the creditors, contributories, shareholders and members in the manner and form prescribed by the court." It was held that under this section it was essential to validity of a winding-up order that it should contain the appointment of a liquidator, and that that duty could not be delegated by the court to a master or other officer of the court. See judgments of Burton and Osler, J. J. A., "*in re Union Fire Insurance Co.*" (1886), 13 A. R. 268. These dissenting judgments were affirmed on appeal, and Court of Appeal reversed, *sub nomine Shoolbred vs. Union Fire Insurance Co.* (1886), 14 S. C. R., 624.

See the remarks of Gwynne, J., in that case as to delegation of power of appointment of liquidator, "*Ib.*, p. 628 *et seq.* *re Great Southern Mysore Gold Mining Co.*" (1883), 48 L. T.; N. S. 11 and *in re Agriculture Cattle Insurance Co.* (1861), 3 DeG. F. & J. 194.

In the Supreme Court the judgments in the *Union Fire Insurance Co.*'s case were mainly on the ground that the appointment under the order appealed from was made without the notice required by the statute. It will be noticed that the section now reads "The court in making a winding-up order may appoint a liquidator," etc. The change was made in the revision of 1886.

An Appellate Court will not interfere with the appointment of a liquidator made by a judge, that being a matter wherein he exercise his discretion. *In re International Contract Co* (1866), L. R., 1 Ch. 523. *In re London, Bombay and Mediterranean Bank* (1866), L. R. 1 Ch. 525. Formerly in England the liquidator might be appointed when the petition for the winding-up order was presented. (*Ib.*) But the practice now prevailing there is to direct a reference to chambers for that purpose. *In re General Financial Bank* (1882), L. R. 20 C. D. 276.

Re Villeneuve Co. vs. Price Bros., 10 Que. P. R. 307.

Held:—"The appointment of a liquidator, under the Winding-Up Act, may be made even where the list of contributories has not

yet been prepared; this list need not necessarily be made by the provisional liquidator."

Joynt vs. Mulcair (1899), 9 Que. K. B. 23.

The judge before whom a petition has been made for the appointment of a curator to the property of an extinct company, can convene the creditors and interested persons without special conclusions to this effect in the petition, seeing that such convening is a necessary preliminary step to the appointment of the curator; but proof of the allegations of the petition must be ordered before deciding the questions of law and before naming the curator.

Many authorities cited.

See *Shoolbred vs. Clark*, 17 S. C. R. p. 272.

Re appointment of provisional liquidator.

The section was amended to read as it now does in view of the decision in *Shoolbred vs. Union Fire*, 14 S. C. R. 624.

Re Guelph Linseed Oil, 2 O. W. R. 1151.

Re appointment of permanent liquidator by reference to the local master.

25. Acting Liquidator.—If more than one liquidator is appointed, the court may declare whether any act to be done by a liquidator is to be done by all or any one or more of the liquidators. R. S., c. 129, s. 23.

"Speaking generally it is not proper for one liquidator to delegate duties or powers to another. They should act in conjunction, and give their constituents the benefit of their joint judgment and discretion in all matters pertaining to their office. If any exigency arises or if it is not found practicable to act in conjunction, the court may exercise its jurisdiction under this section." Per Boyd, C., in *re The Central Bank of Canada* (1887), 15 O. R. 312.

Re Central Bank, 15 O. R. 309.

Joint liquidators must act together, without delegation of powers.

The English rule is followed as to their selection where there is doubt as to the appointment.

26. Additional Liquidators.—The court may, if it thinks fit, after the appointment of one or more liquidators, appoint an additional liquidator or liquidators. R. S., c. 129, s. 22.

In re Dignard, insolvent vs. Hon. A. R. Angers et al. (1910), 11 Q. P. R. 389, Lafontaine, J.

Held:—It is preferable to name but one person as liquidator, the naming of joint liquidators being more often a cause of trouble and increased costs.

It is also preferable that a director of the bank who is a creditor in a large amount should not be appointed liquidator (*in re Northumberland*, 2 De G. and J. 357).

When two persons are suggested as joint liquidators of an insolvent, if one of them should be found unqualified to act, the votes given in favour of the other are as a result void. R. S. C. cap. 144, s. 24.

Woodburn Sons Co., Ltd. vs. Duggan et al. (1910), Que. P. R. 393.

If a joint liquidator abandons his office as such, the other liquidator cannot be authorized to continue alone, without first notifying to that effect the creditors, contributories and shareholders of the company.

27. Notice Previous to Appointment.—No liquidator aforesaid shall be appointed unless a previous notice is given to the creditors, contributories, shareholders or members, and the court shall by order direct the manner and form in which such notice shall be given and the length of such notice. R. S., c. 129, s. 20.

Clement vs. Rheume, 40 Que. S. C. 299.

The directors of a mutual insurance company, that goes into voluntary liquidation, have no power to appoint a liquidator or liquidators. The appointment must be made as provided in the code of civil procedure for that of a curator to an abandonment of property.

Re The Stark T. L. & P. Co., November, 1907. Boyd, C. (unreported, cited *Parker vs. Clark*, Company Law, 1909, p. 399.

The petitioner's nominee is usually named provisional liquidator. See also *re Albert*, 5 Ch. 597.

Re Guelph Linseed Oil, 2 O. W. R. 1151; *Shoolbred vs. Union Fire*, 14 S. C. R. 624.

The provisions of the section must be strictly complied with.

In re Northumberland, 2 De G. and J. 357.

The liquidator should be disinterested. See also *re Commercial Bank*, 9 M. L. R. 342.

La Cie. Villeneuve vs. Price Bros. (1909), Que. R. 36 S. C. 395.

Notwithstanding the provision of s. 27, c. 144, R. S. C. 1906, regarding the necessary notice to be given to creditors, contributories, shareholders, and members, for the appointment of a liquidator for a company in liquidation, it is not necessary that the list of contributories has been fixed by the court, because the statute provides for this in a subsequent section (48). Moreover, it follows from the context of the two sections that this list must be prepared by the liquidator appointed.

Re Northern Assam Tea Co., 5 Ch. 664.

The court is guided but not bound by the opinion and wishes of the liquidators.

See also *Alpha Oil Co.*, 12 P. R. 298 (Ont.); and *re International Contract*, 1 Ch. 523, and *re Central Bank*, 15 O. R. 309; *re Civil Service* (1884), W. N. 158.

Re London, 15 W. R. 33—the voluntary liquidator generally named permanent liquidator.

Markle vs. Ross, 13 P. R. 135 (Ont.). Appeal from decision of the master.

As to Costs, in case of a contestation over the naming of a liquidator—see *re Commercial Bank*, 13 C. L. T. 381.

Stinson vs. The North West Cattle Co. (1902), 14 K. B. 279.

“The appointment of a liquidator under the Winding-Up Act, R. S. C., Ch. 129, without a previous notice to the creditors, contributories, shareholders or members of the company, in the manner and form prescribed by the court, is null and void.” See section 124.

28. Security.—The court shall also determine what security shall be given by a liquidator on his appointment. R. S., c. 129, s. 24.

Shoolbred vs. Clarke in re Union Fire Insurance Co. (1890), 17 S. C. R. 265.

In assigning to provincial courts or judges certain functions under the Winding-Up Act, Parliament intended that the same should be performed by means of the ordinary machinery of the court and by its ordinary procedure. It is, therefore, no ground of objection to a winding-up order that the security to be given by the liquidator appointed thereby is not fixed by the order, but is left to be settled by a master.

29. Provisional Liquidator.—The court may, on the presentation of the petition for a winding-up order or at any time thereafter and before the first appointment of a liquidator, appoint provisionally a liquidator of the estate and effects of the company, and may limit and restrict his powers by the order appointing him. R. S., c. 129, s. 26; 52 V., c. 32, s. 12.

Price vs. La Cie. Villeneuve (1909), 10 Que. P. R. 338.

In the absence of special reasons to the contrary, a person who has entered upon his duties as voluntary liquidator, should be appointed provisional liquidator under a petition for the winding up of a company.

In re Mercantile Bank of Australia (1892), L. R. 2 Ch. D. 204.

Quære as to appointment of official receiver before winding-up order has been made.

Cases cited.

30. Incorporated Company may be Appointed.—An incorporated company may be appointed liquidator to the goods and effects of a company under this Act, and if an incorporated company is so appointed, it may act through one or more of its principal officers designated by the court. R. S., c. 129, s. 21.

2. Where under the laws of any province a trust company is accepted by the courts of such province, and is permitted to act, as administrator, assignee or curator without giving security, such trust company may be appointed liquidator of a company under this Act, without giving security. (Added by 6-7 Edw. VII., c. 51, s. 2).'

31. Powers of Directors to Cease.—Upon the appointment of the liquidator, all the powers of the directors shall cease, except in so far as the court or the liquidator sanctions the continuance of such powers. R. S., c. 129, s. 34.

32. Resignation and Removal.—A liquidator may resign or may be removed by the court on due cause shown, and every vacancy to the office of liquidator shall be filled by the court. R. S., c. 129, s. 27.

The removal of a liquidator is not merely a matter of judicial discretion, and some unfitness must be shewn before the order will be made. *In re Sir John Moore Gold Mining Co.* (1879), L. R., 12 C. D. 325. But on the other hand, the "due cause" does not refer to personal unfitness alone, and the court may remove a liquidator whenever it is of opinion that such removal is to the advantage of those interested in the realization of the assets. *In re Adam Eyton, Ltd., Ex parte Charlesworth.* L. R. (1887), 36 C. D. 299. A liquidator may appeal from an order removing him. (*Ib.*).

The appointment of a liquidator to a company should be set aside if a person interested shews that such appointment has been made without notice to the creditors, contributories and shareholders of the company.

Stimson vs. Northwest Cattle Co. and Allan, 5 Que. P. R. 181.

POWERS AND DUTIES OF LIQUIDATORS.

33. Duties after Appointment.—The liquidator, upon his appointment, shall take into his custody or under his control, all the property, effects and choses in action to which the company is or appears to be entitled, and he shall perform such duties in reference to winding up the business of the company as are imposed by the court or by this Act. R. S., c. 129, s. 30.

National Trust Co. vs. Trusts & Guarantee Co., 26 O. L. R. 279, 5 D. L. R. 459.

Where a company made an assignment for the benefit of its creditors and afterwards a liquidator was appointed, the property then in possession of the assignee for the benefit of the creditors was property to which the company "appears to be entitled," within the meaning of section 33 requiring the liquidator upon his appointment to "take into his custody or under his control, etc."

Re Dom. Trust Co. vs. Harper, 32 W. L. R. 832; 24 D. L. R. 670.

The right of a trust company to retain as its remuneration part of the profits realized from investments, creates a trust coupled with an interest, which, upon the winding up of the corporation passes to the liquidator as an asset for the general benefit of creditors, and the court will not compel the liquidator, before the final wind up to surrender such securities to the *cestui que trust*, nor appoint a special trustee to carry it into effect.

Re Kootenay Valley Fruit Lands Co., Ltd. (James Cooper's case), 22 Man. L. R. 300, 3 D. L. R. 428.

As money paid into a bank designated in a mortgage to receive payment thereof for the mortgagee does not become that of the mortgagee, a limited company, when accompanied by the condition that the money should not be paid out to the mortgagee except upon the delivery of either an assignment of the mortgage to a designated person, or a discharge, assented to by every shareholder, a liquidator of the company could not take possession thereof as effects of the company and execute a discharge of the mortgage under section 33.

Re Glay Adhesives, Ltd., 7 D. L. R. 454, 23 O. W. R. 348.

Where one who has been employed by another to sell shares in a company belonging to that other, sells them by fraud, but procures payment of the purchase price to be made to the company, and not to the vendor of the shares, the vendor cannot recover the money from the company, since to do so would be to

obtain an advantage from his agent's wrongful act, but the money is, nevertheless, not the money of the company, and, therefore, the liquidator of the company cannot recover from the vendor any part of such money which has been paid over to him by the company.

National Trust Co. vs. Trusts & Guarantee Co., 26 O. L. R. 279, 5 D. L. R. 459.

A liquidator, being from the beginning *primâ facie* lawfully in possession of the property of the company sought to be wound up as an officer of the court, and being charged with the duty of applying the proceeds in payment of the company's creditors in due course of administration, is entitled in right of the creditors represented by him as liquidator to contest the validity of a mortgage of personal property made by the company to a trustee for bondholders without any transfer of possession having been made to such trustee and without registration under the Bills of Sale and Chattel Mortgage Act, and as liquidator to set up the invalidity of such mortgage as against the creditors in general of the mortgagor company on the ground of non-compliance with the provisions of the Bills of Sale and Chattel Mortgage Act.

The Imperial Breweries vs. Prevost (1909), 11 Que. P. R. 150.

A liquidator of an insolvent company cannot, upon a mere petition, be authorized to withdraw out of court a deposit made by a garnishee in an action in which the insolvent company was plaintiff.

Re Kootenay Valley Fruit Lands Co., Ltd. (James Cooper's case), 3 D. L. R. 428, 22 Man. L. R. 300.

The liquidator cannot take possession of money paid into a bank designated in a mortgage to receive payment thereof for the mortgagee, such money not having become the property of the mortgagee, a limited company, nor could he execute a discharge of such mortgage.

Re Alexander Dunbar & Sons, Co., 9 E. L. R. 217 (N.B.).

Assets covered by debentures. Rights of unsecured creditor. Right to winding-up order.

National Trust Co. vs. Trusts & Guarantee Co., 5 D. L. R. 459, 26 O. L. R. 279.

Where a company made an assignment for the benefit of its creditors and a liquidator was appointed, the property then in possession of the assignee for the benefit of the creditors was property to which the company "appears to be entitled."

34. Powers.—The liquidator may, with the approval of the court, and upon such previous notice to the creditors, contributories, shareholders or members, as the court orders—

(a.) **SUITS.**—Bring or defend any action, suit or prosecution or other legal proceeding, civil or criminal, in his own name as liquidator or in the name or on behalf of the company, as the case may be;

Arnold vs. The Can. Motors Co., 15 Que. P. R. 13.

A verbal application that a liquidator to an insolvent Ontario company be forced to take up the "instance" will not be entertained as such liquidator is an officer of the High Court of Ontario and not of the Quebec courts.

Champlain Real Estate Co., Ltd., vs. Racine, 15 Que. P. R. 87.

The words "the same fees as in ordinary actions for a like amount" in section 7, art. 76 of the tariff of advocates' fees in cases of the Superior Court, refer only to actions taken in the Superior Court, and claims for less than \$100 would entitle the liquidator to an attorney's fee of a fourth class action in the Superior Court.

Boston Shoe Co. vs. Frank, 48 Que. S. C. 65.

Where the liquidator of an incorporated company made a petition for an authorization to inscribe a judgment in review, and seeing that the delay was about to expire, filed the inscription before his demand was granted, the Court of Review will not reject the inscription, but will ratify the procedure.

Re Standard Cobalt Mines, 2 O. W. N. 725.

Contestation of claim by liquidator. Stay of proceedings. Discretion of official referee.

Hochelaga Bank vs. Lewis (1884), 12 R. L. (Que.), p. 639.

The liquidator must take up the instance in all cases pending against the company.

Ross vs. Perras, 5 C. S. (Que.), 470 (1894), Taschereau, J.

The fact that a company has been put into liquidation does not give rise to a *reprise d'instance* by the liquidator in actions pending in the name of the company.

Hamilton (W.) Mfg. Co. vs. Hamilton Steel & Iron Co., 23 O. L. R., 270 (D. C.).

Action by company in liquidation. Breach of contract for sale of goods. Independent monthly deliveries under contract. Damages

Re Bailey Cobalt Mines, Ltd., 8 O. W. N. 433.

Leave to bring action in name of liquidators—indemnity—costs—proposed sale of assets—adjournment of consideration—order of master—appeal.

Hamilton Mfg. Co. vs. Hamilton Steel & Iron Co. (1910), 16 O. W. R. 694, 1 O. W. N. 1075.

Action by company in liquidation under Dominion Winding-Up Act, the Trusts & Guarantee Co. being the liquidators, to recover \$2,000 damages for breach of an alleged agreement by defendants to sell and deliver to plaintiffs 250 tons No. 1 pig iron at \$20.25 per gross ton, and to give to plaintiffs the option within thirty days from date of agreement, to purchase an additional quantity of 250 tons at same price.

Plaintiffs asserted an exercise of the option to purchase the additional quantity; they admitted delivery of 233 tons, 950 lbs., and claimed damages for non-delivery of 266 tons, 1,050 lbs.:—*Held*, that the liquidators, if entitled to delivery of the iron, were only so entitled upon shewing the vendors that they were ready to pay for the goods to be so delivered. It would be a most unfortunate thing if, in addition to the loss already sustained by defendants in having iron to the value of \$3,884 received and used by plaintiffs, defendants were obliged to deliver a further quantity without at least having it shewn that the iron would be paid for on delivery.

Hyde vs. Thibaudeau, 20 Que. K. B. 200.

An action by the liquidator of an insolvent company against a shareholder to recover his share of bonds wrongfully distributed among them all by the company, whereby it made itself insolvent, is not a revocatory action subject to one year's limitation under Que. C. C., and is properly brought in name of liquidator.

Stevenson vs. Glickman (1907), K. B., 9 Que. P. R. 199. Reversing Dunlop, J.

Based on R. S. C. 1886, c. 129, s.s. 15, 16, 31, 39.

Held:—An action based on a lease entered into by a company before it was put into liquidation, and transferred thereafter by the liquidator without authorization, must be brought against the company and not against the liquidator. *Kent vs. les Soeurs de la Providence*...L. J. 72 P. C. 62, followed.

Nor in such a case can the liquidator sue in warranty in his own name a third person whom he considers liable.

See cases cited. See section 22.

Re Great Prairie Investment Co., 17 Man. R. 554.

The company being in process of voluntary winding up under the Manitoba Winding-Up Act, R. S. M. 1902, ch. 175, the liquidator applied, under section 23 of the Act, for a direction as to whether or not he should take proceedings against a number of former directors of the company to cancel certain shares in the stock which they had issued to themselves as fully paid-up, but without payment of any kind, and to recover the dividends which, to the extent of over \$62,000, they had afterwards paid to themselves on said shares:—*Held*, that this was not "a question arising in the matter of the winding up" for the determination of which an application may be made to the court under section 23, and that no order could be made as the liquidator in such a proceeding is not an officer of the court or under its control, except to the extent stated in sub-section (f) of section 19 of the Act. The judge, however, expressed the opinion that it was the liquidator's duty, under the circumstances, to take the suggested proceedings and that, if he refused, the court would have jurisdiction, under sub-section (f) of section 19, to compel him to do so.

Fecteau vs. Ideal Confectionery Co., 12 Que. P. R. 360.

The liquidator of an insolvent company cannot be compelled to continue an action in the place of the latter which is still in existence, nor jointly with the company. He cannot be compelled to continue it in his own name.

National Trust Co. vs. Trusts & Guarantee Co., 26 O. L. R. 279, 5 D. L. R. 459.

The liquidator may contest the validity of a mortgage of personal property made by the company to a trustee for bondholders, on the ground of non-compliance with the Bills of Sale and Chattel Mortgage Act.

Re Glay Adhesives, Ltd., 7 D. L. R. 454, 4 O. W. N. 350.

Where one who has been employed by another to sell shares in a company belonging to that other sells them by fraud, but procures payment of the purchase price to be made to the company, and not to the vendor of the shares, the vendor cannot recover the money from the company, nor can the liquidator recover from the vendor.

The Victoria Montreal Fire Insurance Co. vs. Derome (1902), 21 Que. S. C. 319, Pagnuelo, J.

"A shareholder who is sued for calls upon his stock by a company which is put into liquidation subsequent to such action, cannot oppose the petition of the liquidator who asks permission to take up the instance in the name of the company, by alleging that the obligation of the defendant to contribute can only be enforced by virtue of a new call made by the liquidator to be in proportion

to the amount necessary to pay the company's debts and the cost of liquidation, which would make futile the previous calls; but such a shareholder will be permitted to plead these matters as against such an action when continued by the liquidator."

Hyde vs. Thibaudau (1910), 11 Que. P. R. 410 (Appeal).

Held:—(Reversing Fortin, J.) The right of action on behalf of creditors of an insolvent joint stock limited liability company to have one of the shareholders ordered to restore assets withdrawn from the capital of the company to the prejudice of its creditors is not extinguished by the lapse of one year applicable to revocatory actions provided by art. 1032 and following of the Civil Code.

Such right of action can be exercised with the leave of a judge by the liquidator (appointed in Canada) of a foreign company against which a winding-up order has been made in Canada, in his quality of liquidator. C. P. 291, C. C. 1040 R. S. C., cap. 144, s. 34. *In re Faure Electric Accumulator Co.*, 40 Ch. Div. 141; *Cullerne vs. London Bldg. Soc.*, 25 Q. B. D. 490; *Banque d'Epargne vs. Geddes*, M. L. R., 6 S. C. 243; *National Funds Assurance Co.*, 1878, 10 Ch. D. 118.

The Comet Motor Company Ltd. vs. The Dominion Mutual Fire Insurance Company (1910), 11 Que. P. R. 314. Fortin, J.

Held:—If, since the institution of the action, an insurance company, defendant, has been put into liquidation, a motion by plaintiff to make the liquidator a party to the suit will be granted, but the liquidator must be summoned in the ordinary way. C. P. 117, 525. R. S. C. cap. 144, s. 34, 107.

The Standard Mutual Fire Insurance Co. vs. The Dominion Mutual Fire Insurance Co. & Meunier (1910), 11 Que. P. R. 392. (Review).

Held:—A liquidator is made party to a case not by way of motion, but by means of an ordinary writ of summons. See *The Comet Motor Co. vs. The Dominion Mutual Fire Insurance Co.*, 11 Que. P. R. 314, Fortin, J.

The Royal Bank of Canada vs. Mutual Fire Insurance Company of Canada (1910), 11 Que. P. R. 295. Fortin, J.

Held:—It is not by exception to the form, but by dilatory exception, that a defendant must set up that the liquidator is not a party to the suit. 2. Default to answer to an exception to the form is not an admission of the allegations of the exception, the grounds of which must be proved. (Jurisprudence) Code of Civil Procedure, 111, 174, 177, 521.

Stevenson vs. McPhail, 9 Que. P. R. 199 (K. B.)

An action founded on a lease executed by a company before it was put in liquidation and delivered afterwards, without authority, by the liquidator, should be brought against the company itself and not against the liquidator. *Kent vs. Les Soeurs de la Providence*, 72 L. J. P. C. 62, followed. In such case the liquidator cannot, in his own name, maintain an action *en garantie* against a third party whom he claims to be liable.

Stevenson vs. McPhail (1907), 17 Que. K. B. 119.

"A company constituted by federal charter, continues to exist after it is put in liquidation and after the appointment of a liquidator, until its affairs are finally wound up. Its legal rights whether by way of action or defence, during this interval must be exercised in its own name. But where it is necessary to attack or to defend its rights, in the interest of creditors, this must be done in the name of the liquidator who represents the creditors."

Common vs. McCaskill, 13 Que. S. C. 282.

Held:—The judicial authorization required by a liquidator to enable him to sue a debtor of the company, must be obtained before the issue of the writ of summons and must cover the amounts claimed; an authorization given after the issue of the writ and for an amount less than that demanded, is insufficient and will result in the dismissal of the action.

(b.) BUSINESS OF COMPANY.—Carry on the business of the company so far as is necessary to the beneficial winding up of the same;

The Imperial Breweries Co. vs. Prévost & Gauvin et al. (1909), 11 Que. P. R. 150, Fortin, J.

Held:—A liquidator to an insolvent company cannot, upon a simple petition, withdraw a deposit made by a garnishee in the hands of the prothonotary of the Superior Court in a case in which the company was plaintiff, the procedure being irregular and made by a person not a party to the case.

(c.) SALE OF PROPERTY.—Sell the real and personal and heritable and movable property, effects and choses in action of the company, by public auction or private contract, and transfer the whole thereof to any person or company, or sell the same in parcels;

Re Metropol. Mortgage & Paving Co., 7 W. W. R. 1204.

An unregistered mortgage made by way of assignment is void as against a liquidator. It is impossible for the parties to a transaction by way of mortgage or charge to alter the effect of section 102 (1) of the Companies Act by adopting a form which does not accord with the real transaction between them. The term "debts" in the above section should not be confined to such debts as are presently due. The expression "book debts" is generally used with reference to purely mercantile transactions, but is an apt term to describe an obligation accruing due to a mortgage company.

Dominion Linen Mfg. Co. vs. Langley, 19 O. W. R. 648.

Sale of goods—breach of contract—conversion—damages—reversing judgment of MacMahon, J., 14 O. W. R. 1163.

Chandler & Massey, Ltd. vs. Irish, 3 O. W. N. 383.

Illegal dealings with assets. Shares acquired in new company by shareholder of the old company now in liquidation. Paid for by assets of old company.

Scott vs. Sieman; Murphy vs. Traders Bank, 2 O. W. N. 697, 18 O. W. R. 538.

Sale of property and assets.

Re Dom. Milling Co., 3 D. L. R. 897.

Leave to proceed with sale after winding-up order. Sale by mortgagee.

Re McCann Knox Milling Co. (1910), 1 O. W. N. 579.

Sale of land by liquidator—reference—approval of referee—application to court to confirm sale—unnecessary proceeding—Winding-up Act, R. S. C. 1906, ch. 144, section 34.

Clement vs. Rheume, 40 Que. S. C. 299.

A judicial order authorizing the liquidator of a company to dispose of its assets should clearly set forth the corporate name of the company, otherwise it is invalid and of no effect.

Re Hamilton Mfg. Co., Ltd., Hall's case, 4 O. W. N. 421.

Purchase of assets from liquidator—alleged misrepresentation—appeal from master.

Re Bishop Construction Co., Ltd.; Haines vs. Garth, 23 Que. K. B. 284, 15 D. L. R. 911.

Where the liquidators of a construction company have been authorized by the court in winding up proceedings to complete a construction contract for the benefit of the estate, and in the work of completion adopt the prior contract between the company and a sub-contractor for part of the work, the sub-contractor's contract price is to be divided so as to collocate him for a dividend (where the claim is not privileged) as upon an ordinary claim in respect of the work done prior to the liquidator, but the subsequent work will be ordered to be paid for in full.

Nantel vs. La Cie de Chemin de Fer de la Baie des Chaleurs, 9 Que. S. C. 47; confirmed in appeal, 5 K. B. 65.

Held, that the Provincial Statute (56 Vict., ch. 33) which provides for the sequestration and sale of the property of a railway company bonussed by the province when it is insolvent, applies to a company subject to a Federal Statute.

Communauté des Soeurs de la Providence vs. Bastien (1900), 11 K. B. Que. 64.

"A creditor of a bank in liquidation may intervene in an action brought by the liquidator against a debtor of the bank, although the conclusions of his intervention do not differ from those of the main action and no new facts be alleged by him; saving, however, the right of the court, at the merits, to condemn the intervenant to pay costs if his intervention be inopportunately made."

Citing many authorities.

Kent es qual. vs. La Communauté des Soeurs de la Charité, etc., *vs. Bastien* (1901), 19 S. C. Que. 556. Pagnuelo, J.

"The liquidator of a bank in liquidation has no quality to sue a debtor of such bank upon a note which became due before the bank was put into liquidation, but the action must be brought in the name of the bank.

"Although a creditor of a bank in liquidation may intervene in an action brought by the liquidators against a debtor of the bank, in order to watch the proceedings and to continue them where the plaintiffs might not proceed with diligence, and to exercise remedies favourable to creditors, he cannot, when the plaintiffs have answered the plea of the debtor and demanded its dismissal on special grounds, enter into a contestation with the defendant looking to the dismissal of his plea upon grounds already invoked by the plaintiffs, and hence he will be condemned to pay the costs of his contestation."

This judgment was confirmed by the Court of Appeal; and upon demand of the liquidators to amend the writ and declaration so as to implead the bank it was held that the liquidator cannot, by way of amendment, implead the bank in an action which he lacked the quality or status to begin. 12 K. B. Que. 120.

In the Privy Council the judgment of the Court of Appeals was reversed, on the ground that only a matter of form was in question and hence the amendment should have been allowed. L. R. 1903, A. C. 220.

See *Ward vs. The Montreal Cold Storage & Freezing Co.* (1904), 26 Que. S. C. 310, cited under section 69.

Sabiston vs. Montreal Lithographing Co., 6 Que. K. B. 510, reversing *DeLorimier, J.*; confirmed by the Privy Council.

Held, the sale by the liquidator of the good will and assets of a company incorporated under letters-patent from the Crown does not transfer to the purchaser the right to use the name of the company after its dissolution—this being a right which can only be granted by the Crown—and he is not entitled to an injunction to restrain a person who, since the dissolution, has registered a new firm under a similar name, from doing business under such name, there being no evidence that its members or the person sought to be restrained agreed or undertook not to do it.

(d.) GENERAL ACTS.—Do all acts, and execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose use, when necessary, the seal of the company;

(e.) PROVING IN BANKRUPTCY.—Prove rank, claim and draw dividends in the matter of the bankruptcy, insolvency or sequestration of any contributory, for any sum due the company from such contributory, and take and receive dividends in respect of such sum in the matter of the bankruptcy, insolvency or sequestration as a separate debt due from such contributory and ratably with the other separate creditors;

(f.) DRAWING AND INDORSING BILLS AND NOTES.—Draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company;

(g.) RAISING FUNDS.—Raise upon the security of the assets of the company, from time to time, any requisite sum or sums of money; and

(h.) GENERAL POWERS.—Do and execute all such other things as are necessary for winding up the affairs of the company and distributing its assets.

In re Dom. Medical Institute Dorval vs. Smith, 15 Que. P. R. 102.

The liquidator of an insolvent company being an officer of the court, the court will invest him with the powers necessary to enable him to put the purchaser of a lease of the company in possession of the property of which he has become tenant.

Liability for injuries to employees, liquidator carrying on business. *Parker & Clarke* 419.

Harrison vs. Nepisiquit Lumber Co., 11 East. L. R. 314.

A liquidator is in no sense a subsequent purchaser for value, but represents the company and acquires no rights as liquidator which the company itself did not possess, save those which are given him by the Winding-Up Act.

2. Company Liable on such Notes and Bills.—The drawing, accepting, making or indorsing of every such bill of exchange or promissory note as aforesaid, on behalf of the company, shall have the same effect, with respect to the liability of such company, as if such bill or note had been drawn, accepted, made or indorsed by or on behalf of such company in the course of the carrying on of its business;

3. No Delivery of Assets Needed.—No delivery of the whole or of any part of the assets of the company shall be necessary to give a lien to any person taking security as aforesaid upon the assets of the company. R. S., c. 29, s. 31; 62, 63 V., c. 42, s. 3.

In actions to recover property which belonged to the company itself before the winding-up order was made, the liquidator must sue in the name of the company. *Turquand vs. Kirby* (1867), L. R., 4 Eq. 123. But it seems that such action may be so brought without the sanction of the court, but then the company runs the risk of costs. *Sarnia Agricultural Implement Manfg. Co., Ltd. vs. Hutchinson* (1889), 17 O. R. 676. An objection against the way in which the action is brought cannot be raised after the evidence has been taken. The proper course is to move in chambers to dismiss the action for want of authority to sue. (*Ib.*) See also *McDonald vs. Carrodi*, 1 Ch. Chambers (Par. b.).

The facts, that if the business was carried on, the mortgagees, who have foreclosed, would have been enabled to dispose of the works in question to better advantage, and that the facility which would thus have been afforded to purchasers of machinery manufactured by the company to have the same repaired would have improved the chances of obtaining payment of outstanding purchase notes, were not considered sufficient grounds to justify the court in sanctioning its continuance by the liquidator. *In re The Haggert Bros. Manfg. Co., Ltd.* (1893), 20 Ont. A. R. 597.

The court will only sanction the contract of a liquidator carrying on the business of the company when it is shewn that it is not one which the court has power to sanction. *In re Wreck Recovery & Salvage Co.* (1880), L. R., 15 C. D. 353.

In winding up proceedings the referee offered certain property for sale by tender, the advertisement stating that the sale would be "peremptorily" closed at a stated hour. At that time only one tender had been received, and the referee held the sale open until the arrival of the mail by a train which was late. This brought two more tenders, and when these were opened, the agent of the second highest tenderer (who was also the chief beneficiary under the mortgage) put in a tender higher than any of the others. The referee directed that notice of this offer should be given to the other tenderers, and, on a subsequent day, as it was still the highest tender, he accepted it—*Held*, that he was justified in doing so. *Re Alger & The Sarnia Oil Co.* (1891), 21 O. R. 441, and 19 Ont. A. R. 446.

Under this section and section 15, a company in liquidation retains its corporate powers, including the power to sue, although such powers must be exercised through the liquidator under the authority of the court. The liquidator must sue in his own name or in that of the company, according to the nature of the action: in his own name where he acts as representative of creditors and contributories; in that of the company to recover either its debts or its property. Where in the Province of Quebec, liquidators sued in their own name to recover a debt due to the company:—*Held*, that the error was one of form which the court had power to give leave to amend under section 516 of the Code of Civil Procedure. The defendants having admitted the debt and pleaded set-off, and not having excepted to the form of the action, leave to amend should be given in the sound exercise of judicial discretion.

Kent vs. La Communauté des Soeurs de la Providence (1903), A. C. 220.

Where an action is brought by the liquidator of a company in liquidation in his own name, he is personally liable for costs; the fact that he obtained leave from the court to sue will not relieve him of his liability in this respect.

Jackson vs. Cannon. 10 B. C. R. 73.

35. When Solicitor may be Appointed.—The liquidator may, with the approval of the court, appoint a solicitor or law agent to assist him in the performance of his duties. R. S., c. 129, s. 32.

Re International Electric Co., 2 O. W. N. 665.

Solicitor acting for both company and liquidator.

36. Debts Due to the Company may be Compromised.—The liquidator may, with the approval of the court compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, demands and matters in dispute in any way relating to or affecting the assets of the company or the winding up of the company upon the receipt of such sums, payable at such times, and generally upon such terms, as are agreed upon;

2. Security May be taken.—The liquidator may take any security for the discharge of such calls, debts, liabilities, claims, demands, or disputed matters, and give a complete discharge in respect of all or any such calls, debts, liabilities, claims, demands or matters. R. S., c. 129, s. 33.

The court has power to sanction an agreement between contributories and creditors of an insolvent company assented to by both classes, whereby it is provided that the creditors shall accept a composition. *In re Commercial Bank Corporation of India & the East* (1869), L. R., 8 Eq. 241.

The power to sell is conferred upon the liquidator not upon the court, though he must obtain the sanction or approval of the court before he exercises the power. *In re Canada Woollen Mills* (Long's appeal), 1905, 9 O. L. R. 367.

Re Stratford Fuel, etc. Co., Ltd., 28 O. L. R. 481, 13 D. L. R. 65.

An agreement by a creditor, in compromising his claim with the liquidator of a company, not to rank in the winding-up proceedings, does not amount to a discharge of a surety, whose contract permitted the creditor to compromise his claim without discharging him, and against whom the creditor expressly reserved all his rights, so as to make the payment of the balance of the claim by the surety a voluntary one which would prevent him ranking in respect thereto in the winding-up proceeding.

37. Creditors may be Compromised.—The liquidator may, with the approval of the court, make such compromise or other arrangement with creditors or persons claiming to be creditors of the company as he shall deem expedient. R. S., c. 129, s. 61.

Re Stratford Fuel Co., Ltd., 8 D. L. R. 146, 4 O. W. N. 414.

Sureties cannot rank on the liquidation of a company, after a compromise had been entered into between the liquidator of the company and the creditor, for a balance for which they are responsible to the creditor, since the creditor could not rank after the compromise was made.

38. Court may Provide as to Powers of Liquidator.—The court may provide by any order subsequent to the winding-up order, that the liquidator may exercise any of the powers conferred upon him by this Act, without the sanction or intervention of the court. 52 V., c. 32, s. 12.

APPOINTMENT OF INSPECTORS.

39. Inspectors.—The court may appoint at any time when found advisable one or more inspectors whose duty it shall be to assist and advise the liquidator in the liquidation of the company. 62-63 Vic., c. 42, s. 1.

An inspector is in a fiduciary position as regards the disposal of the assets and cannot, without the consent of all persons interested, become the purchaser thereof. *In re Canada Woollen Mills, Ltd.* (Long's appeal), 1905, 9 O. L. R. 367.

Re Toronto Wood and Shingle Company. Vol. XXX. Can. Law Times, p. 353.

Jurisdiction of Court under section 39 Dominion Winding-Up Act—Liens.

The 39th section of the Winding-Up Act (Dom.), c. 129, comes, apparently, from two sources, the Canadian Insolvency Acts of 1869, section 50 and of 1875, section 125, and the English Bankruptcy Acts of 1869, c. 71, s. 72 and of 1883, c. 52, s. 102.

The decisions of the courts of the two jurisdictions are not entirely harmonious, but the preponderance of authority is in favour of the jurisdiction sought to be invoked by the liquidator in this case.

In *Archibald vs. Haldan*, 30 U. C. R. 30 (1870), it was held that creditors of an insolvent debtor who had proved in the insolvency proceedings, were within the operation of the 50th section of the Act of 1869, and also all persons who could prove on the estate, although they had not made themselves parties to the insolvency proceedings, and that under the words "all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage hypothec, lien or right of property upon, in or to any effects, or property in the hands, possession or custody of the assignee, may be obtained by an order of the judge on summary petition, and not by suit," applied to proceedings between creditors and persons who had it in their power to become parties to the insolvency proceedings, and that in that respect the jurisdiction was like that of a private *forum*, or more properly a *forum domesticum*.

In *Dumble vs. Whitc*, 32 U. C. R. 601 (1872), it was held that where mortgaged goods were placed in the possession of the mortgagor's assignee in insolvency, the mortgagee could not enforce his right of property to the goods except through the Insolvent Court. The case of *Crombie vs. Jackson*, 34 U. C. R. 575, amplifies the reference to the *forum domesticum* made in *Archibald vs. Haldan*. Wilson, J., after quoting the words of the Act, said:—

"This language is very plain. The object was to establish a special tribunal in the first instance for the disposal of such matters for the benefit of the debtor and the creditors, to prevent litigation being carried on by any one prejudicial to the estate, to prevent the assets being dissipated by law suits, and to have all such matters decided upon promptly by a summary petition pre-

sentable at any time to the County Court or to the judge of it, and specific relief afforded at once if the applicant were entitled to it.

"This method is certainly better for all parties than any remedy which replevin or a bill for specific performance would afford; and it is better than treating the assignee as a trespasser or a wrong-doer by some supposed or implied act of conversion merely because by process or provision of law, he has performed a *quasi* public duty, not for his own benefit, but for others of whose rights he is the guardian."

In *Burke vs. McWhirter*, 35 U. C. R. 1, the same learned judge while admitting that the words of the section were very large and comprehensive, did not think they could be construed so as to affect a person not a creditor of the estate, nor having anything to do with the distribution of the estate, and who claimed the goods in question as his own and denied that they are or ever were the property of the debtor. Further on he intimates that if the words of the section "right of property upon, in or to any effects or property," were read in their generality "they would embrace every claim whatever upon, in or to any effects or property which the assignee had got hold of, although the debtor had not a particle of claim or title to the property."

The cases of *Munro vs. Commercial Building Society*, 36 U. C. R. 465, and *re Kennedy*, *Ibid* 471, may also be referred to. And the cases of *Jameson vs. Kerr*, 6 P. R. 3, and *Barelay vs. Sutton*, 7 P. R. 14, may be cited as shewing a conflict of judicial opinion as to proceedings by way of replevin where goods are in the possession of an assignee in insolvency.

Henderson vs. Kerr, 22 Gr. 91, seems to conflict with the observations of the learned judge who decided *Archibald vs. Haldan*, 30 U. C. R. 37, and the decision in the former case appears to have been modified in *Cameron vs. Kerr*, 23 Gr. 374, where after rectifying a mortgage, the parties were remitted to the proceedings in the insolvency court. See on this point also *White vs. Simmons*, L. R. 6 Ch. 555.

The English Acts of 1869 and 1883 read as follows: "Subject to the provisions of this Act, every court having jurisdiction in Bankruptcy under this Act, shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case."

One of the leading cases under this section is *ex parte Anderson*, L. R. 5 Ch. 473, where it was held that the Court of Bankruptcy had jurisdiction to grant, in a summary way, an injunction to restrain a person not a party to the bankruptcy proceedings from dealing with property alleged to have been fraudulently assigned before the bankruptcy. Sir G. M. Giffard, L.J., there construed section 72 of the Act of 1869 as giving the Bankruptcy Court against the trustee in bankruptcy of his debtor and held that the question whether a bill of sale was fraudulent should be tried in the Bankruptcy Court; Sir W. M. James observing: "Here is a question whether these goods belong to the bankrupt's estate, and all such questions are now to be tried in the Court of Bankruptcy. The question must be determined in order to distribute the estate of the bankrupt; and instead of allowing what is left of the estate to be

frittered away in litigation, the legislature has determined that there should be one court to decide all these questions, we should be very wrong to decide this case so as to throw any doubt upon the subject." And Sir G. Mellish, L.J., added that the question to be tried was to which of two persons the goods of the bankrupt belonged.

Halliday vs. Harris, L. R. 9 C. P. 668, decides that the Court of Bankruptcy may determine questions which affect the realization of the property of the bankrupt, and may restrain an action in a foreign Admiralty Court respecting such property. See also *re Hawke*, 16 Q. B. D. 503. But where there are conflicting claims to any part of the bankrupt's estate between parties who are strangers to the bankruptcy and in which claims the trustee or assignee has no interest, the court will decline to interfere: *re Lowenthal*, 13 Q. B. D. 238.

I have not referred to "the wilderness of single instances" on the other side, which illustrate "the lawless science of the law," because though some of them seem to modify the general principle of jurisdiction affirmed in the cases cited, I prefer those which sustain the largest jurisdiction of this Winding-up Court, especially as in these insolvent company cases it derives its judicial powers from the Dominion Parliament and to the extent over the Dominion referred to in 10 P. R. at p. 420, and in *Barter vs. Central Bank*, 20 Ont. R. 214.

The cases under the special jurisdiction conferred upon the English courts by section 153 of the Companies Act (Imp.), 1862 (with which section 83 in our Winding-Up Act is identical), may also be referred to in aid of the claim of jurisdiction in regard to the matters particularly set forth in our section 39, and especially the observations of Sir G. M. Giffard, L. J., in *Stringer's Case*, L. R. 4 Ch. 493, which were approved of in *Rances' Case*, L. R. 6 Ch., at pp. 114 and 120. See also in our own court, *Livingstone's Case*, 14 Ont. R. 211, and *Turner's Case*, 19 Ont. R. 113.

And it must be kept in view that the intention of this Winding-Up Act and of all legislation respecting insolvency is to get within the control of one court all the estate of the insolvent company to settle there all claims of debt, privilege, mortgage, lien or right of property upon, in or to any effects or property of such insolvent company in the simplest and least expensive way, and to distribute its assets among its creditors in the most expeditious manner possible, and not to have the proceedings of the Winding-up Court or the distribution of the assets delayed or impeded by or dependent upon outside or expensive litigation in other courts. And I may further add that the policy of recent legislation in regard to the jurisdiction of the Courts of Law and Equity has determined that in the one action all remedies to which parties may appear entitled to are to be granted, "so that as far as possible all matters in controversy between parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided," etc.

Re Town Topics Company, 20 Man. R. 574.

Appointment of inspector—objects—mismanagement.

Section 81 added to Manitoba Joint Stock Companies Act, R. S. M. 1902, ch. 30, by 4-5 Edw. VII. ch. 5, considered.

REMUNERATION OF LIQUIDATORS AND INSPECTORS.

40. Remuneration.—The liquidator shall be paid such salary or remuneration, by way of percentage or otherwise, as the court

directs, upon such notice to the creditors, contributories, shareholders or members, as the court orders;

Re Waldron Drouin Co. (1916), 17 Que. P. R. 358.

A liquidator is without right in claiming fees based upon the tariff of the Assoc. of Chartered Accountants of which he is a member. If his services should give him the right to a percentage upon the receipts, it would be necessary to deduct therefrom the amount covered by a bank's claim. The remuneration of a liquidator is based upon the nature of the services rendered, the time devoted thereto, and the responsibility assumed.

Ross vs. Walker (1909), 10 Que. P. R. 428.

Held:—Under section 1713 C. C., the liquidator of an insolvent company has no right to retain the books, papers, or chattels of the company for the amount he has advanced or for his salary.

2. Distribution of.—If there is more than one liquidator, the remuneration shall be distributed amongst them in such proportions as the court directs. R. S., c. 129, s. 28.

41. Remuneration of Inspectors.—The court shall determine the remuneration, if any is deemed just, of the inspector or inspectors. 62-63 Vic., c. 42, s. 2.

The intention of this section is not that the remuneration of the liquidators is necessarily to be increased because there are three to be paid instead of one. Payment is usually a percentage based on the time occupied, the work done, and the responsibility imposed, and when thus fixed it is paid to the liquidator, or divided amongst them if there be more than one. *Re The Central Bank of Canada* (1887), 15 O. R. 309.

In winding up an insolvent bank, when the liquidators are paid by a percentage, it is proper to take into consideration amounts adjusted or set off, but not actually received by the liquidators. In this case they were allowed a commission of $2\frac{1}{4}$ per cent. on moneys actually collected, and $1\frac{1}{4}$ per cent. on those so adjusted or set off. *In re Central Bank vs. Lye's Claim* (1892), 22 O. R. 247; following *Re Mysore Reefs Gold Mining Co.* (1887), 34 C. D. 14. And see *Thomson vs. Freeman* (1868), 15 Grant 384. (This was not the case of a bank, however).

A claim for remuneration must be made by all the liquidators. On an application to divide the commission between three liquidators, Lord Romilly, M. R., said: "I cannot make the order asked. It is founded upon a misconception of what is the true position of the liquidators. When joint liquidators are appointed it is a species of partnership, and, in the absence of any agreement among themselves as to the division of the remuneration the court would leave it to be settled among themselves what proportion each would take." *Re The Langham Hotel Co.* (1868), 17 W. R. 463.

DEPOSITING IN BANK.

42. Moneys to be Deposited in Bank.—The liquidator shall deposit at interest in some chartered bank or post office savings bank or other Government savings bank designated by the court, all sums of money which he has in his hands belonging to the company, whenever and so often as such sums amount to one hundred dollars. R. S., c. 129, s. 35.

43. A Separate Account of Same in Name of Liquidator as such.—Such deposit shall not be made in the name of the liquidator individually, on pain of dismissal; but a separate account shall be kept for the company of the moneys belonging to the company in the name of the liquidator as such liquidator. R. S., c. 129, s. 36.

44. Balance on Hand by Liquidator to be deposited after Winding up.—The liquidator shall, within three days after the date of the final winding up of the business of the company, deposit, at interest, in the bank appointed or designated as hereinbefore provided, any money belonging to the estate then in his hands not required for any other purpose authorized by this Act, with a sworn statement and account of such money, and that the same is all that he has in his hands. R. S. c. 129, s. 40.

45. Penalty for Neglect.—In case any liquidator shall not, within three days after the date of the final winding up of the business of the company deposit in the bank, appointed or designated as hereinbefore provided, any money belonging to the estate of which he is such liquidator, then in his hands, he shall be deemed a debtor to His Majesty for such money, and may be compelled as such to account for and pay over the same. R. S., c. 129, s. 40.

In re London & Caledonian Marine Insurance Co., 11 C. D. 140.

See p. 143 *et seq.*, where the expressions “fully winding up,” “fully wound up,” are defined.

COURT DISCHARGING FUNCTIONS OF LIQUIDATOR.

46. If no Liquidator.—If at any time there is no liquidator, all the property of the company shall be deemed to be in the custody of the court. R. S., c. 129, s. 25.

47. Provision for Discharge of Liquidator, and Distribution by the Court.—Whenever a company is being wound up and the realization and distribution of its assets has proceeded so far that in the opinion of the court it becomes expedient that the liquidator should be discharged and that the balance remaining in his hands of the moneys and assets of the company can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to such officer or person as the court may direct, of such moneys and assets, and the same shall be realized and distributed, by or under the direction of the court, among the persons entitled thereto, in the same way, as nearly as may be, as if the distribution were being made by the liquidator.

2. Disposal of Books and Documents.—In such case the court may make an order directing how the books, accounts and documents of the company and of the liquidator may be disposed of, and may order that they be deposited in court or otherwise dealt with as may be thought fit.—55-56 V., c. 28, s. 2.

Woodburn Sons Co., Ltd. vs. Duggan et al. (1910), 11 Que. P. R. 393. (Bruneau, J.),

Held:—A liquidator who is about to leave the country may resign his office as such;

If a joint liquidator abandons his office as such, the other liquidator cannot be authorized to continue alone, without first notifying to that effect the creditors, contributories and shareholders of the company. R. S. C. cap. 144, ss. 24, 27, 31, 32.

CONTRIBUTORIES.

48. List of Contributories.—As soon as may be after the commencement of the winding up of a company the court shall settle a list of contributories. R. S., c. 129, s. 42.

49. Classes of Contributories Distinguished.—In the list of contributories, persons who are contributories in their own right shall be distinguished from persons who are contributories as representatives of or liable for the debts of others. R. S., c. 129, s. 43.

50. Adding Heirs to List.—It shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, but such heirs or devisees may be added as and when the court thinks fit. R. S., c. 129, s. 43.

51. Liability of Shareholders and their Representatives.—Every shareholder or member of the company or his representative shall be liable to contribute the amount unpaid on his shares of the capital, or on his liability to the company, or to its members or creditors, as the case may be, under the Act, charter or instrument of incorporation of the company, or otherwise;

2. Liability and Asset.—The amount which he is liable to contribute shall be deemed an asset of the company, and a debt due to the company, payable as directed or appointed under this Act. R. S., c. 129, s. 44.

Re Ontario Fire Insurance Co., 23 D. L. R. 758; 31 W. L. R. 483.

The burden of proof that transfers of unpaid stock were made without due information and inquiry as to the financial responsibility of the transferee is upon the liquidator where the insolvent company was by its special act of incorporation made subject to the statutory provisions that the directors should be jointly and severally liable for allowing the registration of a transfer of unpaid stock to a person not apparently of sufficient means, and the liquidator seeks to enforce that statutory liability.

Re Bankers' Trust & Barnsley, 21 D. L. R. 623; 21 B. C. R. 130.

Where there is no acquiescence, delay, or conduct on the part of the alleged contributory to estop him from alleging that at the time when he made his application for preference shares and thenceforth until the liquidation proceedings the company was not in a position to give him preference shares, he is entitled to set up in answer to the liquidator's claim to place him on the list of

contributories that he never got what he applied for by reason of irregularities in the issue to him, as preferred shares, of certain shares which were in fact common shares by reason of their having been legally made into preferred, when in fact all of the legally constituted preferred shares had already been issued to others.

Frank vs. Boston Shoe Co., 24 Que. K. B. 267.

A liquidator of a company who, in a petition entitled "petition to settle the list of contributories," concludes by asking that certain persons named be summoned to shew cause why they should not be declared contributories, cannot enter upon the merits of the litigation, and the court cannot upon these conclusions declare the shareholders contributories nor order them to shew cause at some later date.

Champlain Real Estate Co., Ltd. vs. Verret, 15 Que. P. R. 62.

When the claim against a contributory contestant is separate and distinct from the claims and demands against the other shareholders of the company insolvent, the fact that all the names of the contributories are mentioned in the same petition, and it is demanded by the same conclusion, that they be declared contributories for the amounts remaining unpaid, does not change the nature of the individual character of the claims against each other. So, according to the tariff, on contestation of an application to have a party held to contribute, the same fees are granted as in ordinary actions. If a special enquete is made with respect to said contestation, a special fee will be granted.

In re Lake Ontario Nav. Co. (1910), 15 O. W. R. 23, 20 O. L. R. 191. Judgment of Teetzel, J., 18 O. L. R. 354, 10 O. W. R., 1032, 1037, reversed.

Defendant Davis applied for shares on condition that no further calls would be made thereon, and the shares were allotted him on said condition. He gave his cheque in payment, and proxy to vote on said shares, but objection was raised as to his right to vote on the shares, as they had been sold at a very large discount. When defendant was informed of the objection being raised, he at once stopped payment of his cheque and informed the president that he would have nothing to do with the shares:—*Held*, under the circumstances, that defendant's name should be removed from the list of contributories. *In re Railway Time Tables Pub. Co. ex parte Sandys* (1889), 42 Ch. D. 98, distinguished. The president having been placed on the list of contributories, for the amount of defendant Davis' cheque, for misfeasance for acquiescing in the stopping of payment of same, it was held that as Davis had the right to stop payment, there was no duty imposed upon the defendant president to endeavour to collect the money to which the company was not entitled, and his name should be removed from the list of contributories.

In re Victor Wood Works, 43 N. S. R. 368, 7 E. L. R. 55.

The project of an establishment of a company for the purpose of carrying on building operations, involved the acquisition of the works of an existing company, and the extension of the business by providing additional capital, buildings and machinery. The holders of stock in the existing company to surrender the same and accept stock in the new concern, the capital stock of which was fixed at \$100,000 and the paid-up capital at \$50,000. A subscription list was opened, and was signed by a number of persons for an amount something less than the paid-up capital. A committee of subscribers to the new stock was appointed to act with

the directors of the company with a view to the immediate commencement of operations, and a call of 25 per cent. on the stock was made and was paid by twenty-seven and forty-nine subscribers. After certain liabilities had been incurred for machinery, etc., the project was abandoned, and a petition was filed to have the persons who paid the call made upon the stock made contributories in winding-up proceedings:—*Held*, refusing the application with costs (1) that the stock subscriptions being conditional upon an arrangement for the union of the two bodies going through as a whole, and the project having fallen through, there was a failure of consideration, and there was nothing to prevent the subscribers who paid the call from recovering back the amounts paid by them. (2) The payment of the call, under the circumstances, did not waive this condition. Drysdale, J., dissenting:—*Held*, that the subscribers by their conduct ratified the action of the committee, and were estopped from disputing their liability.

Re Northern Constructions, Ltd., 12 W. L. R. 618. Affirmed on appeal (1910). 14 W. L. R. 308.

Certain parties held to be contributories. The transfer of paid-up stock after the incorporation of the company held to be simply the transfer of promotion stock under another name. The transferees of the stock who took knowing all the circumstances, are liable. Holders of stock alleged to be paid up when paid by dividends declared when company insolvent are liable to be placed on list of contributories.

Angus vs. Pope, 6 Que. K. B. 45. Confirming White, J.

Held:—A company incorporated under the Quebec Joint Stock Companies Act, cannot pay a dividend to its shareholders, except out of the actual profits of the company, and then only when its capital is unimpaired.

The recourse of shareholders as against one another cannot be exercised upon the assets of the company, until the creditors of the company have been paid.

Alley vs. Trenholme, 3 Que. S. C. 163.

"Defendant subscribed on the stock subscription book of a joint stock company for ten shares, and wrote his signature as follows: 'T. A. Trenholme in trust for H. Trenholme,' but the words 'in trust for H. T.' were erased on the stock book.

"*Held*:—That in the absence of evidence as to the time when said words were erased, the presumption was that they were erased at the time defendant signed the stock book, rather than that the book was subsequently falsified; and it was for the party alleging that the erasure was made subsequently to prove it.

"A subscription for shares accepted and acquiesced in by the directors of the company, constitutes the subscriber a shareholder as to such shares, so as to render him eligible for election as a director."

Quære, in case of the winding up of the company, would he not under the same circumstances be held to be a contributory? (Ed.).

In re Jones & Moore Electric Co., Jones' and Moore's Case, 18 Man. L. R. 549, 10 W. L. R. 210.

1. After a person has subscribed in the ordinary manner for shares in a company incorporated by letters-patent under the Manitoba Joint Stock Companies Act, R. S. M. 1902, c. 30, and they have been allotted to him, it is not competent for the company to

release him from his liability to pay for the shares in cash, by entering into an agreement, even under seal, to issue to him fully paid and non-assessable shares in consideration of his covenants to do something in the future. When such an agreement included, with such covenants, a transfer of assets of doubtful value, but the circumstances surrounding the agreement were such as to make it a fraud upon the company, it was held void, and it was ordered that the subscribers for the shares should be settled upon the list of contributories in the winding up of the company for the full amount of their shares. *Elkington's Case*, L. R., 2 Ca. 511, and *Pellatt's Case*, R. L. 2 Ch. 527; followed. *Chapman's Case* (1895) 1 Ch. 771, *Hood vs. Eden*, 36 S. C. R. 476, *Re Hess*, 23 S. C. R. 644, and *re Wragg* (1897), 1 Ch. 796, distinguished. 3. The validity of such an agreement may be inquired into on the application before the judge to settle the list. It is not necessary to bring an independent suit to set it aside. *Re Eddystone Marine Insurance Co.* (1893), 3 Ch. 9, and *re Wragg*, *supra* followed. 4. Subscribers for shares in the company are not entitled in the winding up to set off, against their liability to pay up the shares, claims for goods supplied to the company under such an agreement. *In re London Celluloid Co.*, 39 Ch. D. 190, *Maritime Bank vs. Troop*, 16 S. C. R. 456, *McNeil's Case*, 10 O. L. R. 219, and *In re Paraguassu Steam Tramroad Co., Black & Co's. Case*, L. R. 8 Ch. 254, followed.

Re Globe Fire Assurance Co. (Robertson's Case (1909), 11 W. L. R. 45, affirmed), 11 W. L. R. 293.

Application by liquidator to settle list of contributories. J. signed an application for ten shares on 1st May. On 2nd May, he wrote to the canvasser, withdrawing his application. On 4th May, J's application was accepted by board of directors, and ten shares allotted to him, and notice thereof sent to him on 16th May. On the 9th May J. received a letter from the canvasser to the effect that before getting his letter of withdrawal, the application had been sent in to the head office and J's notes had been discounted. *Held*, that the canvasser had no authority to receive a notice of withdrawal, and as J. had not brought home to the company knowledge of the receipt of his letter of withdrawal before allotment or at any time, he was entered on the list of contributories. R. applied for fifty shares which were allotted to him, and accepted by his agent. The certificate sent to him was returned by him for correction. He was placed on the list. G. applied for twenty shares. The company owed him \$2,000 for fire losses which had been adjusted. *Held*, under above sub-section that G. has a right of set-off. There is no authority in winding-up proceedings giving costs to a contributory.

In re Banque de St. Jean, Bienvenue vs. Marchand, 10 Q. P. R. 223.

Every contributory in a winding up has a right to a complete list of all the contributories: for each one is interested and has a right to require that all the contributories shall be from the first upon the list of contributories, in order that the court may determine what amount each should be called upon to pay as his contribution. A dilatory exception asking that proceedings be stayed until this list be furnished will be maintained. An exception to the form demanding the dismissal of the petition of the liquidator, for the same reason, will be dismissed, because there is no ground for declaring the proceedings void, but only for amending them.

Re Clarke H. Davies, Ltd., 13 O. W. R. 579.

M. agreed to take one share in D. company. For the company

an agent borrowed from M. \$400, giving a certificate for five fully paid shares, saying four shares were as security for the loan. There was no application or subscription for or allotment of stock. *Held*, on winding up of D. company that M. is not liable to be placed on the list of contributories.

Re Distributors Company. Thurston's Case. 13 O. W. R. 735.

T. was a "special partner of the firm M. Co." He was to bear an equal share with other partners in firm's losses. The firm subscribed for stock in D. Co. now being wound up. T. knew of this subscription, and stock was allotted. *Held*, that the several partners are liable to be placed on the list of contributories for unpaid balance of stock subscribed for by the firm.

Lafleur vs. St. Amour. Que. R. 18 K. B. 400.

A person joining others in asking for incorporation by letters patent as a joint stock company, and is described in these letters as the subscriber of a specified number of shares, is a shareholder, and in case of a winding up cannot avoid the position of a contributory on the pretext that the company has not been definitely organized and he has not approved the contracts that caused the winding up.

Re Ontario Sugar Co. McKinnon's Case. 24 O. L. R. 332.

(Leave to appeal refused, 44 Can. S. C. R. 659). See section 106.

The effect of the consent judgment dismissing the action brought by the company against McK. for calls upon shares, was to bar the claim of the liquidator to hold McK. as a contributory in the winding up of the company.

IN THE HIGH COURT OF JUSTICE.

HODGINS, Q.C., MASTER IN ORDINARY.] [SEPT. 1ST, 1890.

CHANCERY DIVISION

RE CENTRAL BANK—EX PARTE BURK.

Contributory—Non-payment of 10 Per Cent.

This is an application by the liquidators of the Central Bank to place the respondent on the list of contributories in respect of 50 shares of the capital stock of the bank, and for an order to stay the issue of cheques for dividends due to him in respect of his admitted claims as a creditor.

It appears that the respondent on the 13th December, 1884, signed the stock book agreeing to take fifty shares at \$100 per share, and that he then gave to the cashier of the bank a promissory note for \$500 payable on demand, being for the ten per cent. required by section 20 of the Bank Act to be paid at the time of subscription or within thirty days thereafter. This promissory note has not been produced and is said not to have been among the assets of the bank when taken charge of by the liquidators. Its non-production by the bank may be held to be evidence of payment or discharge, for a maker paying a note has a right to the possession of the instrument for his own security, and as his voucher and discharge *pro tanto*, in his account with the holder: *Hansard vs. Robinson*, 7 B. & C. 94.

The case is governed by the construction to be given to the proviso to section 20, which reads: "No share shall be held to be lawfully subscribed for unless a sum equal to at least ten per

centum on the amount subscribed for, is actually paid at the time of, or within thirty days after the time of subscribing."

The canon of statutory construction where negative words are used in a statute are that negative words make the statute imperative, while words in the affirmative may make it directory; *Rex vs. Leicester*, 7 B. & C. 12. And from this comes the rule that an absolute (or imperative) enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially per Lord Coleridge, C.J., in *Woodward vs. Sarson*, L. R. 10 C. P. 746. And if I were to consider the policy of the statute, which is conceded to be for the protection of the public interest, I would be bound to give effect to that policy, even if I had doubt as to the meaning of the words used: *Broom's Legal Maxims* (6th ed.), 539.

But the construction to be given to the proviso referred to has been judicially determined in the case of *re Standard Fire Insurance Co.*, 12 App. Rep. 486. There under an analogous provision in an Ontario Act it was held that persons who had subscribed for stock in that company, but who had not paid the ten per cent. within the time limited by the charter, had not become shareholders and could not be made contributories under the Winding-Up Act.

But it is contended that the condition in the Bank Act has been waived by the respondent in giving his promissory note for the ten per cent. payable on demand. A promissory note is defined by the Bills of Exchange Act as "an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or bearer, and the practical question here is whether such a note can be held to be a substantial compliance with the provisions of the Act. No decision in our own or the English Courts has been cited in support of this proposition. But I find ample authority and sound principles in the jurisprudence of the United States to guide me as to the right judgment on the question raised.

In *Leighty vs. Susquehanna Turnpike Co.*, 14 Surgt. & Rawle, 434 (1826), the court in construing an Act requiring payment in money on subscribing for shares, said: "We are of opinion that the giving of a promissory note for the sum which the legislature required to be paid in money, at the time of the subscription, is not money. A promissory note is not money, only an engagement to pay money at a future time, which perhaps may never be complied with. If such notes were to be taken as money, the policy of the law, which required a payment in money, might be easily defeated. A company being the mere creature of law, can act in no other manner than the law prescribes; and cannot be permitted to enter into a contest with the legislature as to the policy or expediency which that legislature has prescribed in the public interest and for the protection of the creditors.

In *People vs. Troy House Co.*, 44 Barb. (N.Y.), 625 (1865), under a similar provision the learned judge said: "The clear mandate of the legislature must be obeyed. Whenever a substitute for money is tolerated it is difficult to see why any such substitute which can come under the denomination of property, may not be employed, and it necessarily leads to a troublesome examination to ascertain the true value of the proposed substitute. The statute has foreclosed any such device or transaction." In *Crocker vs. Crane*, 21 Wend (N.Y.), 211, (1839), the Act required a payment of \$2 per share at the time of the subscription for stock. But the

directors received endorsed cheques for the subscription. It was held that such a proceeding was a mere evasion of the statute and that it was a substitution of individual credit for the cash payment and that a corporation so established never came into legal existence. Persons interested in the credit and solvency of the corporation whether as creditors or stockholders, are entitled to this degree of protection, to wit, that the capital shall be originally paid in money. I know of no authority for dispensing with this plain provision of the law.

There are the cases of *Henry vs. Vermillion, &c., R. Co.*, 17 Ohio 187 (1848), *Neuse River Co. vs. Newbern*, 7 N. C. Jones, 275, and *Wood vs. Coosa, &c. R. Co.*, 32 Ga. 273, and others to the same effect.

But notes so given for the preliminary subscription of stock are not void notwithstanding the statutory condition as to membership in the company; but are enforceable by the company to which they have been given.

In *Pine River Bank vs. Hadselton*, 46 N. H. 114, an action was brought by the bank to recover a note given for a stock subscription which the statute required should be paid in money. The defendant set up the provisions of the Act and contended that his note was void, but it was held that the illegality of the transaction was no defence to the action by the bank on the note.

So in *McRae vs. Russell*, 12 Ired. (N. C.), 204, in a similar action the learned judge said: "It is true the Act says his subscription was void unless he paid the first instalment. That only proves that no recovery could be had on the subscription." But he held that the note was not void, and that the payee could recover the amount of it.

There are, however, cases contra, such as *Thorp vs. Woodhull*, 1 Sand. Ch. 411 (1844), where a cheque had been given on subscribing for stock, but was never fully paid; and *Philadelphia, &c., R. Co. vs. Hickman*, 28 Pa. St. 318 (1857), where it was held that, after the incomplete incorporation of a company, with similar statutory conditions to those referred to, the company might accept payment for stock in labour or materials or in damages which the company was liable to pay, or in any other liability of the corporation, provided there was good faith. But I prefer the law of the prior cases cited, as I find their general reasoning more in harmony with what I believe to be sound law, and also the conclusion of the Court of Appeal in the case cited.

This is not a proceeding to enforce payment of the promissory note, for there is no jurisdiction in this tribunal under the Winding-Up Act to give judgment on independent claims of the bank against its debtors; and besides the presumption to be drawn from the evidence is that the promissory note was given up or destroyed by the cashier.

I must therefore hold that the giving of the promissory note, for the ten per cent. required by the Act to be paid in money, which has never been paid, was not a compliance with the statutory condition, and that the respondent never validly acquired any shares in the capital stock of the bank and he is not therefore liable as a contributory, and the motion of the liquidators must therefore be refused.

As to costs, the Bank Act in equally negative and imperative words to those which I have quoted as to the subscription, provides that no assignment or transfer of shares shall be valid unless it is made and registered and accepted by the person to whom the transfer is made, in a book or books kept by the directors for that

purpose. "No transfer of the respondent's shares can be identified in the books of the bank; but the respondent has sought by the opinions of bank officers and parole evidence to fit an alleged transfer of his shares on to some one of the many transfers by Allen which appear in the bank books. A contract of transfer of shares under the Bank Act, as well as a contract of guarantee under the Statute of Frauds, or a contract in a bill of exchange or promissory note, must be in writing and must contain on its face the evidence of its own identification; and parole evidence to interpret it or identify some others as parties to any such contract, is inadmissible. I can only paraphrase the words Lord Blackburn in *Steele vs. McKinlay*, 5 App. Cas. 768. "The enactment compels the court to refuse to recognize such contracts, however clearly they may be proved, unless there be the statutable evidence." No costs to respondent.

This case will be found reported in Vol. XXX, Canadian Law Times (1910), p. 343.

In re D. Wade Co. (1909), 2 Alta. L. R. 117, 10 W. L. R. 527.

Liquidators of a company in course of being wound up have not, nor have creditors of the company, a right to take advantage of any irregularities in proceedings for forfeiture of shares; and shareholders whose shares have been forfeited to the company cannot be placed on the list of contributories merely because there have been irregularities in the proceedings prior to forfeiture.

Standard Mutual Fire Ins. Co., re Musson's Case (1910), 1 O. W. N. 974.

Holder of unpaid shares in Ins. Co. upon acknowledged trust—liability to be placed on list of contributories. Ont. Ins. Act.

Re Nutter Brewery (1910), 15 O. W. R. 265.

Application to have defendants placed on the list of contributories:—*Held*, that the letters signed by defendants were most improper and were only intended to be used to induce others to subscribe for stock on the supposition that they had subscribed for a large amount of stock; that there had been no allotment of stock to defendants, therefore application should be dismissed, but under the circumstances without costs.

Re Cornicall Furniture Co., Ltd. 18 O. L. R. 101, 13 O. W. R. 137.

Held:—Where, under an order of a High Court Judge, a reference has been directed to an officer of the Supreme Court of Judicature to take all necessary proceedings for the due winding up of a company, and delegating to him for such purpose the powers conferred on the court therefor by the Winding-Up Act, such officer has jurisdiction, in settling the list of contributories, to inquire into and decide as to whether stockholders, holding certificates declaring the stock to have been duly paid up, have in fact paid anything thereon."

Re Harris Campbell and Boyden Furniture Co. of Ottawa, 5 O. W. R. 649, and *re Hess Mfg. Co.*, 23 S. C. R. 644. Considered and explained.

Re Atlas Loan Co. (1903), 30 C. L. T. 366.

Constitutionality of Act incorporating loan company—refusal of company to accept payment of shares—effect of.

Re Clinton Thresher Co. (1910), 15 O. W. R. 645, 20 O. L. R. 555.

Directors made a rateable distribution of treasury stock among existing shareholders (for which nothing was given

to the company), and issued share certificates as fully paid-up stock:—*Held*, that the issue of the stock was in violation of the statute and *ultra vires*, and all who shared in the distribution were alike liable to be placed on the list of contributories, as far as necessary, upon and under the liquidation.

Re Niagara Falls H. & S. Co. (1910), 15 O. W. R. 326.

(*Estoppel*). Defendant originally agreed to subscribe for four shares of \$50 each. He informed the secretary that his liability was to be limited to \$200. The company tendered him eight shares and he accepted them, paying his \$200 therefor. The stock certificate stated that the shares were fully paid up. Defendant received a dividend on the eight shares:—*Held*, that the company could not issue shares at a discount under the Ont. Co. Act, and the defendant having accepted the eight shares and the dividend thereon, he was liable to be placed on the list of contributories.

IN THE HIGH COURT OF JUSTICE.

THE MASTER IN ORDINARY.]

[3RD DECEMBER, 1903.

RE ATLAS LOAN COMPANY—EX PARTE GREEN.

Constitutionality of Act Incorporating Loan Company—Refusal of Company to Accept Prepayment of Shares—Effect of.

It is not, I think, open to this contributory to raise the question of the constitutionality of the Acts of the Parliament of Canada respecting the incorporation and powers of this loan company; for both the Parliament of Canada and the Legislature of Ontario have for many years exercised concurrent legislative power over such companies. Over twenty years ago the substantial question appears to have come up before the Judicial Committee of the Privy Council in *Loranger vs. Colonial Building and Investment Association*, 9 A. C. 157, 3 Cart. 118, when it was held that the incorporation by the Parliament of Canada of a corporation for the business of buying, leasing and selling landed property, of constructing villas, cottages and other buildings, and of lending money on mortgage on real estate, which business it had confined to the Province of Quebec, was not *ultra vires* of the Parliament of Canada.

Then I think that the power given to this company by s. 10 of the Act 61 Vic. c. 92 (D.) to receive money on deposit on such terms as to interest as might be agreed upon practically brought it within the legislative jurisdiction of the Parliament of Canada over savings banks. And that, apart from authority, would give the Parliament legislative jurisdiction to confer other necessary and incidental powers for the contemplative business of the company, even though those necessary and incidental powers came within the class of subjects designated. "local and provincial objects." In *Cushing vs. Dupuy*, 5 A. C. 409, 1 Cart. 252, the Judicial Committee of the Privy Council held that under the legislative jurisdiction over bankruptcy and insolvency, the Parliament of Canada had implied power to interfere with the class of subjects designated property and civil rights within the province.

For these reasons,—apart from the non-compliance with s. 60 of the Ontario Judicature Act,—the constitutional question raised by this contributory must be overruled.

Then as to the question of the contributory's liability for the shares. It appears that on the 11th March, 1890, this contributory subscribed for and was entered in the books of the company as a shareholder in respect of sixty shares of the total value of \$3,000 on which he paid \$1,000. That on the 31st May, 1890, his attorney,

under an informal power of attorney, subscribed for and he was entered in the books of the company as a shareholder in respect of forty more shares of the total value of \$2,000—thus making his shareholding one hundred shares of the total value of \$5,000. That between these dates and the 29th August, 1891, he paid on these shares (including the \$1,000 paid on the 11th March, 1890), in all \$2,000; that on the 5th July, 1895, he sold thirty-eight of his share holdings as fully paid-up shares, by some arrangement with the manager or directors of the company, leaving him the holder of sixty-two shares of the total value of \$3,100, on which \$100 was credited. These shares, by the Dominion Act of 1898, were changed from \$50 per share to \$100 per share, making thirty-one shares of \$100 each.

He has filed objections which admit that his two subscriptions of the 11th March, 1890, and 31st May, 1890, made his holding "in all 100 shares of the value of \$5,000." But he says that the By-law of the company providing that no further payments should be received by the company on the subscribed stock was passed without notice to him; that on the 10th June, 1892, he sent the company the sum of \$300 to be applied on account of his stock still unpaid," *i.e.*, \$3,000, but the company refused so to apply it, and he claimed that such refusal released him from further liability on his shares.

His letters to the company after such refusal raise no question of release from further liability as now urged by him, for on the 12th July, 1899, or about a month after such refusal, he sent the company two dividend cheques to be credited on his account, adding: "It seems to me a very strange thing I cannot pay up anything on my stock, as you know I hold \$5,000 of the first stock issued by the company." Again on the 20th March, 1901, he writes, referring to the refusal to credit the \$300 on his stock, "Now I want to know where I stand as to this \$5,000 stock; am I ever to be allowed to pay up any part of it more than I have already done? If so, at what price? If I am permitted to pay it up at the price I bought it for, I am willing to help the reserve fund along."

These statements shew no repudiation or claim of release from liability—rather a confirmation and acknowledgment of his liability, and a request to be allowed to pay up the balance of his share. I must, therefore, hold that he is still a contributory for the balance due on his shares.

Reported Can. L. Times, XXX. 366.

IN THE HIGH COURT OF JUSTICE.

THE MASTER IN ORDINARY.]

[FEBRUARY 9TH, 1904.]

RE ATLAS LOAN COMPANY—EX PARTE CONTRIBUTORIES.

Settlement of List of Contributories—Who are Contributories.

In *re Central Bank*, 25 Can. L. J. 238, the questions affecting the liability of shareholders, and the many similar defences raised in this liquidation were so fully considered, and subsequently approved by the Court of Appeal in 18 A. R. 209, that I find little to add to the reasons there given, and they are applicable to the large majority of the cases now before me. In Green's case I disposed of some similar defences.

To what is there stated may be added the following observations of Lord Chelmsford in *Spackman vs. Evans*, L. R. 3 H. L. at p. 238: "The only inquiry which the official manager (liquidator) has to make on settling the list of contributories is who are the existing shareholders of the company? And every one

who has, at any time, become a shareholder, and is unable to shew that at the date of the order, he has ceased to belong to the company—either by the forfeiture, or transfer, of his shares, or in some other authorized manner—must be placed upon the list.”

A similar view of the Canadian Act was taken by Hagarty, C. J., in *re Central Bank*. 16 A. R. at p. 245, by his saying, “I think the liquidator must take the shareholders as they appear on the books at suspension;” adding, “If some of the arguments addressed to us were to prevail, it would be possible for persons who had, as shareholders, received dividends in a company, and continued for years as apparent shareholders, to claim to be discharged from liability because of the absence of some merely formal provision in the chain of title to their stock.”

The contract signed by the applicants for shares, or by their agents under powers of attorney, reads: “We the members of the St. Thomas (now Atlas) Loan Company, who have hereunto subscribed and set our hands and seals, and who have become shareholders, testify by our signing and sealing hereof in the said company for the number of shares set opposite our respective names, do hereby severally each for himself, his executors, and administrators, and not jointly one for the other, covenant and declare to and with the president and treasurer of the said company and their successors in office that we and our several and respective executors and administrators shall and will well and truly observe, perform, fulfil and keep all and singular the said foregoing and future rules, by-laws, and regulations of the said company, which on our several and respective parts are or ought to be observed, performed, fulfilled and kept.”

Some of the contributories in this case have objected to their being placed on the list, because there had been no allotment or notice thereof after their subscription to the contract or application for shares. Without considering the effect of the form of subscription given above, the rule governing their membership and liability has been thus stated by Lord St. Leonards: “A man may become a contributory to a company by his acts although he has not made himself legally [*i.e.*, by the ordinary formalities] a member of it. All difficulties arising from not adopting the machinery of the Act of Parliament, are got over by the conduct of parties who claim to be in the situation of proprietors and are so placed accordingly.” *Spackman vs. Evans*, L. R. 3 H. L. at p. 208.

In establishing such liability there must be some evidence written or verbal, or some conduct, or course of dealing, adduced to satisfy the court that there has been a response by the company and an acknowledgment, or acceptance, or dealing by the applicant, which will legally bind both company and applicant. And such response may be evidenced by part or full payment to and receipt by the company for the shares, by attending company meetings, giving proxies, payment and acceptance of dividends, or some act which would in law operate as an estoppel. And of such evidence there is abundance in these cases.

Another objection is as to the form of the certificates in some of the twenty per cent. share holdings. The money value of the shares appears in the form of subscription, and in the by-laws of the company they are fixed at \$50, or in the Dominion Act of 1898, c. 92, they are increased to \$100, and the amount appears on the face of each of the certificates proved in evidence; and therefore the holder of every such certificate becoming, as he did, a shareholder and member of the company, is bound by the contract so evidenced, and is therefore liable for the unpaid amounts which

are required to make up the money value shewn on their certificates of the shares. As a general rule the by-laws of a company, and the certificates of stock issued thereunder, constitute the contract between the shareholder and the company, and both therefore decline the contract liability of such shareholder as a contributory.

It also is claimed that by issuing certificates of a specified and limited number of paid up shares to shareholders who had subscribed for a larger number of shares as shewn by the subscription and other books of the company, the company or its directors or officers had thereby cancelled the subscription for the quantum or residue of shares not included in the certificate. But in the absence of any exercise of the powers of forfeiture or surrender for the non-payment of calls, such a claim, if recognized, would necessarily involve and have the effect of an unauthorized and *pro tanto* reduction of the original capital of the company, which could only be accomplished according to prescribed legal formalities. The list of contributories must, therefore, be settled according to the principles and rules above explained.

Reported, Can. L. Times XXX 368.

Cardiff vs. Norton (1867), Ch. App. Cas. (Eng.) 465.

The A. company, a limited company, with all its shares fully paid up, sold its business and property to the B. company, and, as part of the consideration, 950 shares in the B. company were divided among the shareholders of the A. company. The A. company was afterwards ordered to be wound up.

Held (affirming the decision of the Master of the Rolls), that the A. company and its official liquidators could not maintain a suit in equity against the shareholders who had been placed upon the list of contributories to have the 950 shares in the B. company transferred to the official liquidators of the A. company.

Red Deer Mill & Elevator Co. vs. Hall, 1 Alta. L. R. 530.

Shares in the capital stock of a company, registered under the Companies Ordinance, which have been subscribed for by the memorandum of association, are deemed to be issued at the date of the registration of the company. (*Dalton Time Lock Co. vs. Dalton*, 66 L. T. R. 704, followed) consequently, an agreement filed with the Registrar of Joint Stock Companies subsequent to such date, although the share certificates were not issued until after such filing, cannot be relied on to relieve the shareholder from his liability to pay for the shares in cash, under the Companies Ordinance, s. 43 (X.) *Semble*, that the decision of the judge in settling the list of contributories in winding up proceedings is, as to all questions involved, *res judicata*.

In re Red Deer Mill & Elevator Co., MacDonald's Case, 1 Alta. L. R. 538.

Shares in the capital stock of the company, registered under the Companies Ordinance, which have been subscribed for by the memorandum of association, are deemed to be issued at the date of the registration of the company. (*Red Deer Mill & Elevator Co. vs. Hall*, 1 Alta. L. R. 530, followed). Consequently an agreement filed with the Registrar of Joint Stock Companies, subsequent to such date, although the share certificates were not issued until after such filing, cannot be relied on to relieve the shareholder from a liability to pay for the shares in question under the Companies Ordinance, section 43. The repeal of section 43 by 7 Edw. VII. c. 5, s-s. 4, has not altered the liability of the shareholder in the above respect so far as the liability existed at the date of the

repeal of the section. Section 43, read with section 47 of the Companies Ordinance, fixes the liability in such case. The effect of the new sub-section substituted for s-s. (6) of s. 110 of the Companies Ordinance by 7 Edw. VII. c. 5, s. 13 s-s. (6) is to continue the liability to pay in cash, in the absence of a contract of sale or for services or other consideration in respect of which such allotment was made, but to permit of the contract being filed subsequent to the issue of the shares, within the time specified. The consideration, however, for which the shares were issued must be a valuable consideration, and must have been something existing at the time and not something subsequently accruing. The provision that "the court, if satisfied that the omission to file the contract or a sufficient contract was accidental or due to inadvertence, or that for any other reason it is just and equitable to grant relief," has no application where there was no contract at all in existence at the time of the issue of the shares. In any case, before granting relief, the applicant must satisfy the court that creditors will not be injuriously affected by the order. Consideration of the circumstances in this case which rendered it not "just and equitable" to grant relief. *Quære*, whether it is possible for a subscriber to a memorandum of association to escape liability for payment in cash for the shares subscribed for, and if so, under what consideration. Discussion of cases.

Foley vs. Barber (1910), 16 O. W. R. 607, 1 P. W. N. 1029.

Court of Appeal affirmed judgment of Magee, J., 14 O. W. R. 669, 1 P. W. N. 40 (1909) Dig. Col. 116. Action to set aside subscription for shares—misrepresentation—power to purchase shares in other companies.

Re Central Bank—ex Parte Harrison & Standing (1888), Ep. C. L. T. 271.

A contributory under the Dom. Winding-Up Act is entitled to set off a deposit account against claim against him under the double liability clause of the Bank Act.

In re Cornwall Furniture Co. (1910), 15 O. W. R. 614, 20 O. L. R. 520.

Judgment of Britton, J., 14 O. W. R. 352 affirmed.

Promotors of a company finding difficulty in getting stock subscribed agreed that when the company obtained a bonus of \$15,000 from the town, that \$15,000 of paid up stock would be allotted and distributed *pro rata* among the subscribers:—

Held, in winding-up proceedings, that the holders of this bonus stock were liable to be placed on the list of contributories.

Re Central Bank—N. A. Life Ins. Co's. Case (1890), 30 C. L. T. 275.

When a company has no power under its charter to become owner of bank shares, or to acquire any other title than that of pledgee, such company in winding-up proceedings cannot be treated as an ordinary holder or purchaser of such shares so as to be made subject to the double liability clause in the Bank Act. Where a company having authority to borrow money from other companies, or individuals, pledges its own shares as a security for a loan, the company making the loan thereon cannot be made a contributory in the proceedings for the winding up of such borrowing company. Therefore where an insurance company loaned money to a bank, and took as security for such loan a transfer of certain shares of the bank, which loan was repaid before the insolvency of the bank, but the shares though retransferred by the insurance company were

not accepted in the books of the bank, as required by the Bank Act, the insurance company was held not liable to contribute in the winding up of the bank in respect of such shares.

Foley vs. Barber and Montreuil vs. Barber (1909), 14 O. W. R. 669., 1 O. W. N. 40.

Plaintiffs sought to set aside their subscriptions for unpaid stock in the Distributors Co., Ltd., on the ground of misrepresentation by the company, and defendant Carpenter, against whom they sought damages. The defendant Barber, counterclaimed to have both plaintiffs declared liable to be placed on the list of contributories of the company which was being wound up. Plaintiff Foley set up the defence to the counterclaim that his company could not purchase shares in any other company in the absence of a by-law expressly authorizing it, and relied upon R. S. M. 1902, c. 30, s. 68. *Held*, upon the evidence that the plaintiffs had failed to prove any misrepresentations against the company or defendant Carpenter. *Held*, also, that as the Foley Company were given the special power to purchase shares in other companies in their letters-patent of incorporation, their vice-president and manager had acted within his wide general powers of management, and his company was bound by his act. *Royal Bank vs. Turquand* (1856), C. E. and B. 327, followed. Both plaintiffs were placed on the list of contributories, Foley for \$7,500, and Montreuil for \$1,500, with costs of the counter-claims to be paid by plaintiffs.

Re Winnipeg Hedge & Wire Fence Co., Ltd., 1 D. L. R. 316, 22 Man. L. R. 83.

A promoter who gets shares in return for the transfer of patent rights which were known to the company to be of no real value, will be held as a contributory on a winding up.

Chandler & Massey Ltd. vs. Irish, 3 O. W. N. 383.

Shares acquired in new company by shareholder of the old company now in liquidation. Paid for by assets of old company.

In re Charles H. Davies Ltd., McNicol's Case, 18 O. L. R. 240, 13 O. W. R. 579.

The appellant, who agreed to take one share in a company, received and accepted a certificate for five shares, expressed to be fully paid up, four of which the managing director of the company informed him were intended only as security for certain paper to which he had become a party for the accommodation of the company. No stock was subscribed for by or allotted to him, but a dividend was paid to him:—*Held*, that he was a contributory in respect to the one share only. *Bloomenthal vs. Ford* (1897), A. C. 156, followed. *Re Perrin Plow Co.*, 12 O. W. R. 387, distinguished.

Re D. Wade Co., Ltd., 10 W. L. R. 527.

Persons placed on list of contributories by order of a judge applied to have the judgment set aside and to be allowed to shew why they should not be placed on said list. *Held*, that under section 21 of the Ordinance the application must be made to the judge who made the order, and to him in court.

Lafleur vs. St. Amour, 6 E. L. R. 53.

Plaintiff's name appeared on the demand for incorporation, and in the letters patent. There never was a regular meeting of the company. No election of president and officers; the provisional directors were never replaced. *Held*, that as company was legally in existence, he is a contributory.

Re Manes Tailoring Co., Crawford's Case, 13 O. W. R. 829.

C. subscribed for 300 shares of stock in this company of the

par value of \$10 each. He subscribed \$25 towards incorporation expenses, which had been applied as a payment on his stock. At the first meeting of directors this stock was allotted to C. as fully paid up stock. Later twenty-five such paid up shares were transferred to C. When the company was apparently solvent he transferred these shares to M., receiving therefor \$150, and withdrew from the company. As the shares had been transferred long before the winding up he was held not to be a contributory. The liquidator then applied under section 123 above, to have him and other directors held jointly and severally liable for misfeasance in issuing this stock as fully paid up. *Held*, he was liable only for the profit, \$125, he made on transfer to M.

In re Nipissing Planing Mills, Ltd., Rankin's Case, 18 O. L. R. 80, 13 O. W. R. 360.

A company was incorporated under the Ontario Companies Act, R. S. O. 1897, c. 191, on the 4th April, 1907. One R. did not sign the memorandum accompanying the petition, as prescribed by section 10, s-s 2, of that Act, but he had signed a memorandum in the same form subscribing for \$500 of stock in the proposed company, and alleged that this subscription was not meant to bind him unless the company attempted to buy out a certain rival business, and, this not being done, he notified the company before it was organized that he would not take the shares. In 1907, the company drew on him for calls, but he refused to accept the drafts, the company allotted stock to R., and he attended a meeting of the shareholders on the 6th April, 1908, but only to protest against his being considered to be one. No stock certificate was issued to him. *Held*, that, since the memorandum which R. signed was not the memorandum which accompanied the petition for incorporation, he did not become a shareholder by virtue of the statute, and he was not liable as a contributory on the winding up of the company. *Re Provincial Grocers, Ltd., Calderwood's Case*, 10 O. L. R. 705, distinguished.

Re Cornwall Furniture Company (1909), 14 O. W. R. 352.

Promoters of a company finding difficulty in getting stock subscribed said that when the company got a bonus of \$15,000 from the town, that \$15,000 of paid-up stock would be allotted and distributed *pro rata* among the subscribers. This was done. Stock was allotted and certificates issued to and received by these subscribers:—*Held*, in winding up proceedings, that holders of this bonus stock must be placed on the list of contributories.

Brownlee vs. Hyde (1906), 15 Que. K. B. 221.

"Subscribers to shares of a limited company who would be entitled to demand the nullity of their obligations towards the company, on the ground that the subscriptions had been obtained by fraud, have not this right as against the liquidator of a company in liquidation who acts, not in the exercise of rights of the company, but as representing the creditors."

Many authorities cited.

McCarthy vs. Common (1898), 8 Que. K. B. 128.

"A shareholder who is sued for the purpose of placing him upon the list of contributories of a company in liquidation, cannot plead against creditors, represented by the liquidator, fraud in the formation of the company and false pretences in the securing of stock subscriptions, especially when he had never demanded the annulment of his own subscription.

"The promotor of a company is in the position of a shareholder

thereof, even without the directors of the company having ever allotted stock to him upon his subscription to the company's assets.

"The name of a shareholder whose stock has been confiscated for non-payment of calls cannot be put on the list of contributories.

"The liability of such a shareholder towards the creditors of the company, at the date of the confiscation of his shares, is subsidiary to that of the company."

Reversed in Supreme Court:—29 S. C. R. 239.

Larocque vs. Beauchemin, 9 Que. S. C. 73.

Held:—Where there is no fraud or simulation, and the transaction is in good faith, anything which is in law equivalent to a payment, or which would be in law sufficient evidence to support a plea of payment, is a payment in cash within the meaning of this section. So, where D. and three others sold a paper mill to a joint stock company for \$35,000 (the company consisting of themselves and others), but in pursuance of a special arrangement between them and the other shareholders, accepted \$10,000, the balance of \$25,000 being credited to the shareholders as 50 per cent. paid up on the stock subscribed by them, it was held that this was a payment "in cash" within the meaning of article 4722 above cited, and that the shareholders could not be called upon by the liquidator to pay up the amount so credited to them.

In re West London & General Permanent Benefit Bldg. Society (1894), L. R. 2 Ch. 352.

"The liability of members of a building society for its ordinary debts—such as rent, rates, taxes—does not depend on the doctrine of partnership, or on the contract of the members *inter se*, but on the doctrine of principal and agent; and if the assets are insufficient, the members, both advanced and unadvanced, are liable as contributories for such debts, if incurred while they are members.

"The assets of the society, when it was ordered to be wound up, were sufficient to pay the ordinary creditors, but not the depositors also, in full:—

"*Held*:—That the actual costs of realizing the properties as they existed at the commencement of the winding up must first be paid out of the assets as they then existed, and that the rest of such assets must be applied in paying ordinary debts and loans on deposits, *pro rata*; that to meet the estimated costs of winding up (other than costs of realization) a call must be made on all the members, both advanced and unadvanced, in proportion to their shares; that the deficiency due to the ordinary creditors must also be met by calls on all the members:

"*Held*, however, that neither advanced nor unadvanced members were liable to contribute, beyond the amounts payable on their shares under the rules and tables, to pay the deficiency due to the depositors; and that the advanced members were entitled to redeem on paying the calls above mentioned, and the amounts due under their mortgages and the rules and tables." Cases cited.

Re Ontario Accident Insurance Co., 3 O. W. N. 140.

Ratification, subscription and allotment.

Re Canadian McVicker Engine Co., Geiss's Case, 13 O. W. R., 916.

G. agreed with a director to take \$2,000 stock and to pay for same by a rebate of 10 per cent. from each month's account. This was in writing signed by a director, but never signed by the com-

pany. No allotment of stock was ever made. He never attended meetings as a stockholder. *Held*, he is not a contributory.

Modern Bedstead Co. vs. Tobin, 12 O. W. R. 22.

As to the necessity for allotment and notice. See also *Robinson's Case*, L. R., Ch. 322.

In re Scottish Petroleum Co., 23 Ch. D. 413. *Pellatt's Case*, 2 Ch. 527; *Gunn's Case*, 3 Ch. 40; *Harris' Case*, 7 Ch. 587; *Howard's Case*, 1 Ch. 561.

As to liability of Charter Shareholders, and of those who sign the memorandum of agreement.

Re Wakefield Mica Co., 7 O. W. R. 104.

Re London Speaker Co., 16 A. R. 508.

Re Haggert Bros., 19 A. R. 582.

Re Cement Stone & Bldg. Co., *McBean's Case*, 8 O. W. R. 264.

In the following cases some authority is found for the principle of holding directors, who act as such, but to whom stock has not been allotted, liable as contributories for at least the number of shares necessary to qualify them to act as directors.

Hutchinson's Case (1895), 1 Ch. 226.

Isaac's Case, (1892), 2 Ch. 158.

Re Hucynia Co. (1894), 2 Ch. 403.

In Re Lake Ontario Navigation Co. (1910), 15 O. W. R. 23, 1 O. W. N. 308.

Defendant Davis applied for shares on condition that no further calls would be made thereon, and the shares were allotted to him on said condition. He gave his cheque in payment, and proxy to vote on said shares, but objection was raised as to his right to vote on the shares, as they had been sold at a very large discount. When Defendant was informed of the objection being raised he at once stopped payment of his cheque and informed the President that he would have nothing to do with the shares.

Held:—Under the circumstances, that Defendant's name should be removed from the list of contributories. The President having been placed on the list of contributories, for the amount of Defendant Davis' cheque, for misfeasance for acquiescing in the stopping of payment of same, it was held that as Davis had the right to stop payment there was no duty imposed upon the Defendant president to endeavour to collect the money to which the company was not entitled, and his name should be removed from the list of contributories. Judgment of Teetzel J., 13 O. W. R. 1032, 1037; 18 O. L. R. 354, reversed.

Oakes vs. Turquand, et al. (1867), L. R. 2, H. L. 325.

Where a person has been, by the fraudulent misrepresentations of directors, or by their fraudulent concealment of facts, drawn into a contract to purchase shares in a company, the directors cannot enforce the contract against him, but he may rescind it. But he must do so within a reasonable time.

A contract induced by fraud is not void, but voidable; and therefore though the persons who by their fraud induced it may not enforce it, other persons may, in consequence of it, acquire interests and rights, which they may enforce against the party who has been so induced to enter into it.

A contributory is a person who has agreed to become a member of the company, and whose name is upon the register.

Where a memorandum of association (which was registered)

differed from the prospectus on which it professed to be founded, and on which, as setting forth the true objects of the association, A. had become a shareholder, though he, on discovering the difference, might have repudiated his shares, he could not after the failure of the company relieve himself from liability to contribute to the debts of the association, on the ground that he had been ignorant of something which, with proper diligence, he might have known.

Henderson vs. The Royal British Bank, 7 E. & B. 356, adopted. Many decisions are cited.

Re Karberg's Case (1892), 3 Ch. 1.

Defence of misrepresentation, where misrepresentation was made before the company was incorporated, in a prospectus put before the public by the promoters.

See also, *Re Scottish Petroleum*, 23 C.D., 413.

Re Pakenham Pork Co., 6 O. L. R., 582.

Where the shareholder in an action for calls before the company is wound up, makes a counterclaim to rescind his contract to take shares, alleges fraud, etc., he will be granted, in a winding up, the benefits he could have obtained prior thereto.

See also *Re Whiteley* (1900), 1 Ch. 365.

The Victoria-Montreal Fire Ins. Co. vs. Derome (1902), 21 Que. S. C., 319. Pagnuelo, J.

A shareholder who is sued for calls, upon his stock by a company which is put into liquidation subsequent to such action, cannot oppose the petition of the liquidator who asks permission to take up the instance in the name of the company, by alleging that the obligation of the defendant to contribute can only be enforced by virtue of a new call made by the liquidator to be in proportion to the amount necessary to pay the company's debts and the costs of liquidation, which would make futile the previous calls; but such a shareholder will be permitted to plead these matters as against such an action when continued by the liquidator.

Re London Fence, Ltd., 17 W. L. R. 387 (Man.).

Upon the windin up of a company, two persons on the list of contributories applied to stay the trial of the question of their liability, until some shareholder, who wished to have the question tried out, should indemnify the liquidator. *Held*, they had a status, and could intervene to ask the Court for directions with respect to the liquidator. *Re Sarnia Oil Co.*, 14 P. R. 435, followed. *Held*, also, that the wishes of the shareholders and creditors could be ascertained without holding a meeting, their consent could be expressed by counsel. *Re West Hartlepool Co.*, L. R., 10 Ch. 619, followed. *Held*, also that the application, being supported by 95 per cent. of both shareholders and creditors, should be granted.

In Re East Norfolk Tramways Company, Barber's Case (1877), L. R. 5 C. D.

"It was provided by the articles of a company that no person not recommended by the board of directors for election as a director should be eligible unless at the time of election he had held twenty shares for two months. B., who was not a shareholder, agreed to become a director, and was unanimously elected at a general meeting at which six of the seven directors, who were then the only shareholders, were present. B. did not act as a director, and before anything further had been done he wrote refusing to be connected with the company. The company, nevertheless, sent him

a letter of allotment for twenty shares, of which he took no notice. The company was afterwards ordered to be wound up.

Held:—By the Master of the Rolls and by the Court of Appeals, that the fact that six of the seven directors voted for B. at the general meeting did not amount to a recommendation by the Board, as they were not met in the capacity of directors; that B.'s election was, therefore, void, and that he was not a contributory.

Forbes Case (Law Rep. 19 Eq. 353) and *Stephenson's Case* (45 L. J. (Ch.) 488), distinguished.

As to the form of the offer for shares.

See *Re Standard Fire*. 12 A. R. 486.

• *Re Scottish Petroleum Co.*, 23 C. D. 413.

Challis' Case, 6 Ch. 266.

Ratification of agreement to purchase stock, how judged.

Sharpley vs. Lauth, 2 C. D. 663.

See also, *Re Scottish Petroleum Co.*, 23 C.D. 413, and *Challis' Case*, 6 Ch. 266.

The principles governing contracts in general will be applied in connection with allotment of stock or application therefore.

Re Canadian Tin Plate Co., 12 O. L. R. 594.

Pellatt's Case, 2 Ch. 527.

Hebb's Case, 4 Eq. 9.

Gunn's Case, 3 Ch. 40.

IN THE HIGH COURT OF JUSTICE.

HODGINS, Q.C., MASTER IN ORDINARY.] [MAY 18TH, 1891.

RE FARMERS LOAN AND SAVINGS COMPANY—EX PARTE DICKIE.

Shares held by Trustees—Liability beyond Amount of Trust Estate.

In Cook on Stockholders, sec. 322 (g) (ed. 1887), it is stated that "in England at an early day the common law rule was declared to be that guardians, executors and trustees had no right to invest the trust fund in the stocks of private corporations and that if they did so, they, themselves, were personally liable for the money so invested." And in sec. 246, it is further stated, that "a trustee of stock, who is recorded on the corporate books as a stockholder, is, it seems, at common law, liable on such shares as though he were the absolute owner of the same."

In 1845, the remedies of creditors of stock companies against their shareholders were limited by an English statute to "the extent of their shares respectively in the capital of the company not then paid up" (8 Vict. c. 16, s. 36 Imp.), a provision which has been imported into our Canadian law.

And s. 44 of the Winding-up Act, R. S. C., c. 129 (containing substantially the provisions of ss. 90, 134 and 200, of the English Companies Act, 1862), enacts that "every shareholder or member of the company, or his representative, shall be liable to contribute the amount unpaid on his shares of the capital, or on his liability to the company or to its members or creditors as the case may be under the Act, charter or instrument of incorporation of the company or otherwise; and the amount which he is liable to contribute shall be deemed an asset of the company payable as directed or appointed under this Act."

The liability of the shareholder "under the Act, charter or instrument of incorporation of the company," is the amount unpaid on the shares held by such shareholder at the time of the winding up of the company.

But it is contended that this liability does not apply to persons holding shares as trustees or executors in the company, and that only the trust estate in the hands of such trustees or executors is liable as declared in s. 38 of R. S. O. (1897), c. 191, and s. 32 of R. S. C., c. 118, and similar Acts.

Without considering whether this provision of the statute law applies to shareholders resident in another jurisdiction, or to all cases of the investment of trust funds, or only to cases where the original investment was by the creator of the trust or the testator, or whether it must be read as subject to the provisions of R. S. O. (1897), c. 130, I must, on other grounds, hold that it cannot be invoked in this case.

The party who became the shareholder here was the guardian of an infant resident in and subject to the law of the Province of Nova Scotia, and by the law of that Province such an investment of infant's moneys was unauthorized and a breach of trust. To give effect to the contention that the trust estate only is liable, would be to give judicial sanction to the breach of trust, and to an abrogation of the Nova Scotia local law respecting trusts to which she is subject—which Courts never do, for, as the maxim puts it *nemo ex proprio dolo consequitur actionem*.

And in this case there is no evidence that the present contributory ever had any trust money in her hands, or that the money invested by her was her own or the trust money of the infant. And even if it was disclosed that the money so invested was such trust money, it is not shewn that she had other trust moneys of the infant in her hands sufficient to meet her liability, or if she had whether she has paid it over to the infant beneficiary without providing for her liability in respect of future calls under her contract for these shares.

In s. 46 of the Winding-up Act (copied from s. 75 of the Companies Act, 1862), it is enacted that the liability of a shareholder shall create a debt accruing due at the time when his liability commenced, but payable at the time when calls are made. Under the English clause it was held by Lord Westbury, L.C., in *Ex parte Camvell*, 4 De G. J. & S. 39, that such liability commences at the date when the shareholders enters into the contract under which he becomes a member of the company.

As to the alleged settlement between this contributory and the minor, after she became of age, no details have been given, and the minor, though now an adult is not and would not be a proper party to these proceedings. See *Imperial Mercantile Credit Association, Cush's Case*, L. R. 6 Eq. at p. 459. Besides the cheques for the dividends since the alleged settlement shew that such dividends have been payable to and have been received by this contributory, and not by the alleged minor.

(See also *Mitchell's Case*, L. R. 9 Eq. 363, as to the two sets of rights between a shareholder and a *cestui que trust*, which is to some extent the converse of this case.)

I must, therefore, hold that this contributory is liable for the amount claimed by the liquidator.

Reported, Vol. XXX., Canadian Law Times, p. 348.

IN THE HIGH COURT OF JUSTICE.

THE MASTER IN ORDINARY.]

[JULY 3RD, 1893.

RE ONTARIO EXP. CO.—KIRK'S CASE.

Transfer of Shares for Benefit of Company—Liability of Contributory.

This case must follow the decision in *Chadwick's Case*. The parties seem to have agreed that a surrender of part of Marling's shares to the company under s. 4 of the Act, would not be operative, and so introduced the mode adopted of a transfer of 45 shares to Kirk. The entries in the books treat these 45 shares as living shares, and Kirk did not surrender them to the company as he had the right to do under the 4th section of the Act. But he cannot be held liable for the unpaid first call, and he will, therefore, be entered on the list for 45 shares on which \$4,050 are unpaid. See *Littledale's Case*, L. R. 5 Ch.

Reported, Vol. XXX., Canadian Law Times, p. 350.

In re Victoria Montreal Fire Insurance Co. (1904), 6 Que. P. R. 302, Davidson, J.

That in proceedings to put an alleged shareholder on the list of contributories and to obtain payment of the balance of stock subscribed by him, he is not entitled to plead that conditions precedent to the organization of the company were not fulfilled, and that the company never validly existed.

Common vs. McArthur, 29 Can. S. C. R. 239, followed.

IN THE HIGH COURT OF JUSTICE.

THE MASTER IN ORDINARY.]

[JULY 3RD, 1893.

RE ONTARIO EXP. CO.—BRENNAN'S CASES—ERRITT'S CASE.

Shares held "in Trust"—Liability of Contributory.

I find on the evidence that these parties transferred their shares to Chadwick and that he got the benefit of the payments they had made on the shares so transferred to him. The consideration he gave was one share each out of the shares held by him as his personal right. The transaction was a compromise entered into between Chadwick and the parties named, under which their opposition to the Bill then before the Senate was withdrawn. On the evidence I cannot find that these parties knew that the transfer was made to Chadwick for the company and the words "in trust" in the transfers do not disclose the trust on which they were transferred. See *Ex parte Reeve*, 7 L. T. R. s. 267. Besides, it appears from the books that these transferred shares were entered in the books as Chadwick's shares and Chadwick's post cards confirm this result.

The transfers made prior to the Act of 1891 cannot be held to be surrenders to the company under the 4th clause of that Act, for at the time they were made the company had no power to take transfers or surrenders of stock, except under certain rights and formalities. Nor can the transfer made after the Act was assented to, for the transfer so made was in pursuance of a prior compromise on the same terms as the Brennan compromise. Besides the entries in the books treat them as living shares, and Chadwick did not exercise the right he had to surrender them allowed him by the Act, and I cannot hold that the form of transfer, in this case,

is a surrender under the 4th clause. See *Ex parte Morgan*, 1 De G. M. & G. 421, *Ex parte Lane*, 1 De G. J. & Sm. 504; *Chapman & Baker's Case*, L. R. 3 Eq. 361; *Ashurst vs. Mason*, L. R. 20 Eq. 225. And as to the rule in dealing with director's shares, *Brown & Anderson's Cases*, 19 Beav.

Chadwick must be entered on the list in respect of the shares held "in trust."

Reported in Vol. XXX., Canadian Law Times, p. 351.

Cf. as to time to take action to set aside purchase of shares. *London Speaker Co.*, 16 A. R. 508, and *Oakes vs. Turquand*, 2 H. L. 325. See sec. 21.

As to presumptions arising from presence of a person's name in the company's list of shareholders, see *Oakes vs. Turquand*, 2 H. L. 325; *Hindley's Case* (1896), 2 Ch. 121.

As to modes of acquiring stock, by subscription or by allotment, see *Dictum of Boyd C.*, *Re Queen City Refining Co.*, 10 O. R. 264.

As to responsibility of a contributory where offer for stock was made by an agent, see *Ormerod's Case* (1894), 2 Ch. 474; *Bentley's Case*, 69 L. T. 204.

Re Ontario Bank; Barwick's Case, 24 O. L. R. 301.

Purchase by manager of bank of bank's shares with bank's money. Breach of trust, Liability of subsequent purchaser as contributory.

52. Liability after Transfer of Shares.—If a shareholder has transferred his shares under circumstances which do not, by law, free him from liability in respect thereof, or if he is by law liable to the company or its members or creditors, as the case may be, to an amount beyond the amount unpaid on his shares, he shall be deemed a member of the company for the purposes of this Act, and shall be liable to contribute, as aforesaid, to the extent of his liabilities to the company or its members or creditors, independently of this Act.

2. An Asset.—The amount which he is so liable to contribute shall be deemed an asset and a debt as aforesaid. R. S., c. 129, s. 45.

A person who acquires shares within sixty days before the suspension of a bank should be placed upon the list of contributories; and so also should the persons who have transferred the shares to him. *Re The Central Bank of Canada (J. D. Henderson's Case)*, (1889), 17 O. R. 410, *Baines' Case*, 1889, 16 A. R., 237. And see the Bank Act sec. 130, which enacts that any person who has held shares within 60 days before the suspension of the bank shall be liable for all calls on such shares in the same manner as if they had held them at the date of the suspension. But this does not affect any recourse they may have against the actual holders.

Re Warton Beet Sugar Co., *Freeman's Case*, 12 O. L. R. 149.

As to liability of a past member of the company. See also *Re Discoverers Finance Co.*, 24 T. L. R. 12.

53. Liability of Contributory a Debt.—The liability of any person to contribute to the assets of a company under this Act, in the event of the business of the same being wound up, shall create

a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made, as hereinafter mentioned, for enforcing such liability. R. S., c. 129, s. 46.

King's Case. 6 Ch. 196.

Is an ordinary debtor of a company a contributory?

Re Warton Beet Sugar Co., Freeman's Case. 12 O. L. R. 149.

54. Provable Against His Estate.—In the case of the bankruptcy or insolvency of any contributory, the estimated value of his liability to future calls, as well as calls already made, may be proved against his estate. R. S., c. 129, s. 46.

The power to prove "in the case of the bankruptcy or insolvency of a contributory the estimated value of his liability to future calls" only applies where the bankruptcy of the contributory is contemporaneous with the winding up of the company. *Martin's Patent Anchor Co. vs. Morton; Martin's Patent Anchor Co. vs. Hewett* (1868), L. R., Q. B. 306.

Bank of British North America vs Warren. 14 O. W. R. 325, 19 O. L. R. 257.

Bank crediting account overdrawn with cheque subsequently dishonoured, becoming holders for value thereof. See sect. 70.

55. Contributory may be ordered to hand over Money and Books.—The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories as trustee, receiver, banker, agent or officer of the company, to pay, deliver convey, surrender or transfer forthwith, or within such time as the court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate or effects which are in his hands for the time being, and to which the company is *prima facie* entitled. R. S., c. 129, s. 47.

A creditor of the company who obtains a garnishee order attaching moneys of the company in the hands of its bankers, and who subsequently and after the presentation of a petition for winding up, but, before the order is made, obtains an order for and receives payment of the moneys, is not a trustee within the meaning of the section, and the court has no power to compel him to refund to the liquidator the money so obtained. *In re United English & Scottish Assurance Co., ex parte Hawkins*. L. R., 5 Eq. 300, and (1868), L. R., 3 Ch. 787.

Re Ilkey Hotel Co. (1893), 1 Q. B. D. 248; *Re Capital Fire*, 24 C. D. 408; *Re Anglo-Maltese Co.*, 54 L. J. Ch. 730; *Ex parte Hawkins*, 3 Ch. 787.

56. Court may Order Payment by Contributory.—The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents, to the company, exclusive of any

moneys which he or the estate of the person whom he represents is liable to contribute by virtue of any call made in pursuance of this Act. R. S., c. 129, s. 48.

In re The Sleeper Engine Co. (1906), 8 Que. P. R. 436, K. B.

"A motion to amend a dilatory exception made to call in new contributories, will be granted, where the motion does not alter the nature of the exception."

Reversing Davidson, J., Bosse and Trenholme. JJ., *dissentientibus*.

Grissell's Case, 1 Ch. 528.

It is not a defence to set up a debt due by the company to the person against whom an order has been made under this section.

Stringer's Case, 4 Ch. 475.

An order may be made directing the repayment of a dividend paid irregularly.

Re Cavley & Co., 42 C. D. 209.

So also, as to an unpaid call made prior to a winding up.

57. When Calls may be Made on Contributories.—The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves. R. S., c. 129, s. 49.

Re Cordova (1891), 2 Ch. 580.

Unpaid calls may be ordered paid. See also *Re Contract Corporation*, 2 Ch. 95.

58. Consideration of Possible Failure to Pay—Proviso as to Maturity of Debt.—The court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same: Provided, that no call shall compel payment of a debt before the maturity thereof, and that the extent of the liability of any contributory shall not be increased by anything in this section contained. R. S., c. 129, s. 49.

Victoria-Montreal Fire Insurance Co. vs. Hyde (1904), 29 Que. S. C. 282, Dunlop, J.

"Section 49 (old Act—now sect. 58), of the Winding-Up Act provides that no calls shall compel payment before maturity thereof, and that the extent of the liability of any contributory shall not be increased by anything in the section contained.

Under the above section the liquidator of a company in liquidation cannot, with or without the authorization of the Court, make calls of such a nature as to make the obligations of the contributory

more onerous than provided by the charter incorporating the company." Authorities cited.

59. Payment by Contributory into Bank.—The court may order any contributory, purchaser or other person from whom money is due to the company, to pay the same into some chartered bank or post office savings bank or other bank or Government savings bank, to the account of the court, instead of the liquidator.

2. Enforcement of Order.—Such order may be enforced in the same manner as if it had directed payment to the liquidator. R. S., c. 129, s. 50.

60. Rights of Contributories.—The court shall adjust the rights of the contributories among themselves. R. S., c. 129, s. 51.

Re Maudc's Case, 6 Ch. 51.

As to basis of distribution of surplus assets. See also *Re Birch vs. Cropper*, 14 A. C. 525.

As to preferences to which preferred shares are entitled in a winding up, see:

Re New Transvaal Co. (1916), 2 Ch. 750; *Re Mutoscope Syndicate* (1899), 1 Ch. 896; *London India Rubber Co.*, 5 Eq. 519.

As to holders of shares issued at a discount.

Re West Coast Gold Fields (1906), 1 Ch. 1.

Bishop vs. Smyrna Ry. (1895), 2 Ch. 596; *Re Bridgewater* (1891), 2 Ch. 317.

These cases may be consulted for a discussion of the basis of distribution of profits accrued before and after liquidation.

Re Alexandra Palace Co., 23 C. D. 297.

As to the jurisdiction of the court under this section.

MEETINGS OF CREDITORS.

61. Meetings of Creditors for Ascertaining their Wishes.—The court may if it thinks it expedient, direct meetings of the creditors, contributories, shareholders or members to be summoned, held and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meetings to the court. R. S., c. 129, s. 19.

Re Poole (1882), 21 Ch. D. 397.

The liquidator may be authorized by the court to disregard resolutions or recommendations of the directors. See also *Ex Parte Cocks*, 21 Ch. D. 405.

He may even follow unreasonable directions at his own cost. *Ex Parte Brown*, 17 Q. B. D., 488.

Re Exchange Bank vs. Campbell (1885), 15 R. L. 373.

Where sufficient notice has been given of a meeting, the actions of those who attend are binding on those who do not.

And sufficient notice must be given, *Re Commercial Bank Corporation*, 1 Ch. 538.

Re Sun Lithographing Co., 5 O. W. R. 509.

The business transacted must be only that specified in the order calling the meeting. Minority rights discussed.

Re Thomas Edward Brinsmead & Sons (1897), 1 Ch. 406.

May such a meeting be called before a winding-up order is made? See also *Re Joint Stock Coal Co.*, 8 Eq. 146.

Re Commercial Bank Corporation. 1 Ch. 538.

As against shareholders the interests of creditors will be first considered.

62. Votes According to Amount of Claim.—In such case regard shall as to creditors be had to the amount of the debt due to each creditor and as to shareholders or members, to the number of votes conferred on each shareholder or member by law or by the regulations of the company;

2. Preliminary Proof.—The court may prescribe the mode of preliminary proof of creditors claims for the purpose of the meeting. R. S., c. 129, s. 19.

See cases under section 61.

As to right of a creditor to vote before proof of his claim.

Ex parte Ruffle. 8 Cr. 1001; *Re Newton* (1896), 2 Q. B. 403; *Re Sun Lithographing Co.*, 5 O. W. R. 510.

63. Court may Summon Meeting of Creditors to Consider any Proposed Compromise.—Where any compromise or arrangement is proposed between a company in course of being wound up under this Act and the creditors of the company, or by and between any such creditors or any class or classes of such creditors and the company, the court, in addition to any of its powers, may on the application in a summary way of any creditor or of the liquidator, order that a meeting of such creditors or class or classes of creditors shall be summoned in such manner as the court shall direct. 62-63 V., c. 43, s. 3.

64. Sanction of Compromise.—If a majority in number representing three-fourths in value of such creditors or class or classes of creditors present, either in person or by proxy, at such meeting, agree to any arrangement or compromise, such arrangement or compromise, may be sanctioned by an order of the court and in such case shall be binding on all such creditors, or on such class or classes of creditors as the case may be, and also on the liquidator and contributories of the company, 62-63 V., c. 43, s. 3.

The court has no power under the statute to enforce a compromise upon a dissentient minority, nor can a liquidator be compelled to consent to a compromise. *Re Sun Lithographing Co.* (1893), 24 O. R. 200. *In re Albert Life Assurance Co.* (1871), L. R. 6 Ch. 381. And a compromise recommended by a liquidator may be rejected by a dissentient minority. "The only power is in the liquidator with the sanction of the court, and there is no power in the court to order a compromise, whether the liquidator recommends it or not." Per James, L. J., in *In re East of England*

Banking Co. (Pearson's Case) (1872), L. R., 7 Ch. 309, p. 311. But see the Companies' Act of 1870, 33 and 34 Vic., c. 104, whereby a statutory majority of creditors is enabled to bind a minority. There is no similar enactment in Canada.

65. Chairman of Meeting.—In directing meetings of creditors, contributories, shareholders or members of the company to be held as provided in this Act, the court may either appoint a person to act as chairman of such meeting, or direct that a chairman be appointed by the persons entitled to be present at such meeting; and in case the appointed chairman fails to attend the said meeting, the persons present at the meeting may elect a chairman qualified, who shall perform the duties prescribed by this Act, 52 V., c. 32, s. 13.

66. Voting to be in Person or by Proxy.—No contributory, creditor, shareholder, or member shall vote at any meeting unless present personally or represented by some person acting under a written authority, filed with the chairman or liquidator, to act as such representative at the meeting or generally. R. S., c. 129, s. 55,

Pontbriand vs. Cosky, 14 Que. P. R. 19.

The Winding-Up Act applies to the voluntary, as well as to compulsory, liquidation of an insolvent company.

PRODUCTION OF PASS-BOOKS.

67. Bank Book of Liquidator to be Produced at Meeting.—At every meeting of the contributories, creditors, shareholders or members, the liquidator shall produce a bank pass-book, showing the amount of the deposits made for the company, the dates at which such deposits were made, the amount withdrawn and dates of such withdrawal. R. S., c. 129, s. 37.

68. And on Order of Court.—The liquidator shall also produce such pass-book whenever ordered so to do by the court. R. S., c. 129, s. 38.

CREDITOR'S CLAIMS.

69. What Debts may be Proved against Company.—When the business of a company is being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent and for liquidated or unliquidated damages, shall be admissible to proof against the company.

2. Uncertain Claims Valued.—In case of any claim subject to any contingency or for unliquidated damages or which for any other reason does not bear a certain value, the court shall determine the value of the same and the amount for which it shall rank. R. S., c. 129, s. 56.

Shareholders in a loan company, in answer to a proposal from the company, paid towards the reserve fund dividend paid to them

by the company and various other sums of money, with a view to increase the reserve fund to the same amount as the paid-up stock. In winding-up proceeding. *Held*, that such shareholders were not entitled to rank as creditors upon the assets of the company with the other creditors, depositors and debenture holders, and that any claim they had against the company and its reserve fund was subject to the payment of the debts of the company. *Re Atlas Loan Co.*, claims on Reserve Fund, 1905, 9 O. L. R. 468.

Re Standard Cobalt Mines, Ltd., 5 O. W. R. 351.

Claim on assets—assignments.

Re Stratford Fuel, etc., Co., Ltd., 8 D. L. R. 146, 4 O. W. N. 414.

The sureties for a debt due from a company to their principal are entitled to rank on liquidation, if they pay the claim before the claim is filed by the principal; but if the principal proves his claim, the sureties cannot also prove, but upon payment they would be subrogated to the rights of the principal at the date of payment.

Re Stratford Fuel, etc. Co., Ltd., 13 D. L. R. 64, See also 8 D. L. R. 146.

Sureties who, according to the terms of their guaranty, are compelled to pay a creditor of a company the difference between the amount of his claim and what he received on compromise with the liquidator, are entitled under section 69, to rank for the amount of such payment in the winding-up proceedings.

Brown vs. Coughlin, 50 Can. S. C. R. 100.

By a contract of suretyship C. and others guaranteed payment to a bank of advances to a company by discount of negotiable securities and otherwise, the contract providing that it was to be a continuing guarantee to cover any number of transactions, the bank being authorized to deal or compound with any parties to said negotiable securities and the doctrines of law and equity in favour of a surety not to apply to its dealings. The company became insolvent, and its liquidator brought action against the bank to set aside some of its securities, which action was compromised, the bank receiving a certain amount, reserving its rights against the sureties and agreeing not to rank on the insolvent estate. The sureties were obliged to pay the bank and sought to rank for the amount. *Held*, affirming the judgment of the Appellate Division, that they were not debarred by the compromise of said action from so ranking.

Ward vs. The Montreal Cold Storage & Freezing Co. (1904), 26 Que. S. C. 310.

"A shareholder of a company, from the day on which it is put in liquidation, must be considered a creditor, on a contestation of a claim made against the company, and he is entitled to demand, by direct action, what he might have demanded on a contestation of a claim against the company."

Confirmed in appeal.

See *Socurs de la Providence vs. Bastien*, 11 Que. K. B. 64. Cited under section 34 (c).

Ex parte Maclure, 5 Ch. 737.

A claim for commission on future profits may not rank.

Re Thurso New Gas Co., 42 C. D. 486.

Costs of an action begun before the winding up and thereafter continued by leave of the court are not preferred.

Re Hart vs. Ontario Express, 22 O. R. 510.

The lessor ranked for the full amount of his claim, to the end of the term contracted for.

The Richelieu & Ont. Nav. Co. vs. The Steamer "Imperial," et al., 35 Que. S. C. 312.

A lien for damages by collision on a vessel owned by a company in liquidation under the Winding-Up Act of Canada, is enforceable before the Winding-up Court, and no action *in rem* will lie against the vessel in admiralty. Nor will leave granted by the Winding-up Court to proceed *in rem* before the Admiralty Division of the Exchequer Court, confer jurisdiction on the latter to deal with the case.

Re Farmers Loan & Savings Co.—Ex Parte Home Savings & Loan Co., p. 357, Vol. XXX. Canadian Law Times.

Creditor's claim—Right to prove loan on stock really owned by insolvent company.

A very full decision, with numerous authorities.

Colonial Engineering Co. vs. Dom. Light, Heat & Power Co., 13 Que. P. R. 436.

An application by a creditor for permission to examine the books of the company in liquidation will not be granted unless special reasons are shewn.

Re Stratford Fuel, etc., Co., Ltd., 8 D. L. R. 146, 4 O. W. N. 414.

The sureties for a debt due from a company to their principal are entitled to rank on liquidation if they pay the claim before the claim is filed by the principal; but if the principal proves his claim, the sureties cannot also prove, but upon payment they would be subrogated to the rights of the principal, at the date of payment.

Evans vs. Coventry, 25 L. J., Ch. 489; *Stringer's Case*, 4 Ch. App. 475.

In Flitcroft Case, 21 Ch. Div. 519, it was expressly held that payments of dividends out of capital, even with the assent of the shareholders, made the directors liable for the return of the amount as constituting a breach of trust, and that the Statute of limitations could not be set up.

See also: *Bendick vs. Garrick*, 5 L. R. Ch. p. 233; *Masonic & Gen. Life Assurance Co. vs. Sharpe* (1892), 1 Ch. Div. 154; *in re Alexandra Palace Co.* 21 Ch. Div. 149.

Allan vs. Hanson, 18 S. C. R. 667, *Kent vs. Les Soeurs, etc.* (1903), A. C. 220, approved.

Stevenson vs. McPhail, 117 K. B. 119, distinguished.

Duff vs. Barbeau cited as over ruled by *Kent vs. Les Soeurs, etc.*

Hyde vs. Thibaudeau (1910), 11 Que. P. R. 419 (Appeal).

Held (reversing Fortin J.) The right of action on behalf of creditors of an insolvent joint stock limited liability company to have one of the shareholders ordered to restore assets withdrawn from the capital of the company to the prejudice of its creditors, is not extinguished by the lapse of one year applicable to revocatory actions provided by Art. 1032 and following of the Civil Code.

Re General Rolling Stock Co., 7 Ch. 646.

The Statute of Limitations ceases to run after the date of the winding-up order.

But re Mitchell's claim, 6 Ch. 822.

A claim which has been barred by the statute, before the winding up, is not admissible to proof.

Ex parte Topping 34 L. J. B. K. 44.

If the debt has been barred by the Statute of Limitations before the winding up, the acknowledgment of it in the statement of affairs prepared by the liquidator does not take the case out of the Statute.

IN THE HIGH COURT OF JUSTICE.

THE MASTER IN ORDINARY.]

[25TH FEBRUARY, 1904.

RE PATENT CLOTHBOARD CO.—EX PARTE TOWN OF
PARRY SOUND.

Assessment—Notice of after Winding-up Order.

By virtue of a by-law, No. 166, of the municipal council of the town of Parry Sound, passed on the 28th November, 1897, the premises of the above named company in the said town were "exempted from taxation for a period of ten years from the date hereof, subject to the condition following, namely, that during the whole of the said period the said company is to be engaged in the manufacture of the said products for which the same was incorporated."

During 1903 the assessor assessed the premises at a certain value, and the municipal council levied a tax on the said company on the assumption that the said company had ceased to manufacture the products for which it was incorporated. The company was ordered to be wound up pursuant to the provisions of the Dominion Winding-Up Act, and a liquidator was appointed who took possession of the premises about the _____ day of _____, 1903.

Subsequent to this date the former manager of the company received a notice of assessment from the assessor, which he states in his affidavit he immediately returned to the assessor, "and directed him to have the said notice of assessment sent to E. R. C. Clarkson, the permanent liquidator of the said company," which I find on the evidence was not done by either the assessor or collector, until long after the time limited for appeals from assessments had expired.

I think the assessment and taxation of the premises in 1903 cannot be sustained on two grounds:—

1. The by-law of 1897 exempted the premises from taxation for a period of ten years on the condition that the company should be engaged during the whole of the said period in the manufacture of the products for which it was incorporated. It is alleged that this condition was broken by the company; but whether it was or not was a fact to be determined after notice to the company, and after such evidence as the facts would warrant. No notice calling upon the company to shew cause why the condition of exemption should not be declared broken, or why the by-law should be repealed, was given to the company; nor was there any investigation to which the company was a party. And without this notice it was not legally within the power of the municipal council to declare the condition broken, and thereupon proceed to repeal the by-law or make the company liable to taxation. By their *ex parte* proceedings the town violated the old maxim of the common law: No one ought to be judge in his own cause, for it is not allowable for one to be both judge and party."

2. In *Nicholls vs. Cumming*, v S. C. R. 395, the Supreme Court held that the assessment of property for the purposes of taxation was in the nature of a judicial proceeding; and that notice to the party of the assessment of his property was essential to the validity

of the assessment roll. The assessor in this case was notified that the person on whom he served a notice had ceased to be manager of the company, and was also given the name of the proper party to be served with notice of the assessment. This was disregarded by the assessor and no notice came to the knowledge of the liquidator, who was the proper party to be notified. I must therefore hold on both grounds that the taxes claimed are not proper charges or liens on the property of this company in the hands of the liquidator, and that they cannot be enforced, except such taxes and water rates as the company has been accustomed to pay—against which the liquidator may deduct the costs of these proceedings which I award against the town.

Re Diamond Machine Screw Co. See section 23.

Right of municipality to rank for taxes, without issue of distress warrant before liquidation.

Re Toronto Wood & Shingle Co. April 13, 1894. (Master in Ordinary). Reported in full at p. 353. Vol. XXX. Canadian Law Times.

RE CANADIAN CAMERA COMPANY—EX PARTE A. R.
WILLIAMS MACHINERY COMPANY.

Hire Receipt—Effect of Sale—Right to Rank as Preferred Creditors.

[MASTER IN ORDINARY].

The stated case in this matter gives the details under what the Williams Company claim a lien of \$266.50 on No. 3 turret lathe purchased from them by the Camera Company about the 7th of May, 1900; this sum is made up of \$120.56, the balance of purchase money due on the lathe, and of \$134.89 and \$11.15 for further purchases made by the Camera Company from the A. R. Williams Company from time to time subsequent to the said 7th of May, 1900.

The claim of lien is sought to be enforced under an order for the purchase of this No. 3 turret lathe and all the tools in connection with the same, payable \$120.56 in cash, and three notes for \$120.56, and with interest at 7 per cent., and which contains the following conditions:

"The title in the said machinery and goods, and goods included in former orders, and orders which may be hereafter given by us to you shall not pass from you until all the terms and conditions of this order and such other orders shall be fully complied with by us, and until all moneys payable and notes given under this order, and such other orders have been fully paid and satisfied."

Neither the former orders nor the orders subsequently given have been produced, nor have their contents, if in writing, been disclosed in these liquidation proceedings.

The Conditional Sales Act, R. S. O. (1897), c. 149, provides that an order for a chattel, where the condition is such that the possession of the chattel passes without any ownership therein being acquired by the bailee until the payment of the purchase or consideration money, or some stipulated part thereof, shall only be valid as against subsequent purchasers or mortgagees without notice in good faith for valuable consideration, in the case of (1) manufactured goods or chattels which, at the time possession is given to the bailee, have (2) the name and address of the manufacturer or vendor plainly attached thereto, and (3) where the bailment is evidenced in writing signed by the bailee.

These three statutory conditions are essential to the lien sought to be enforced here. No objection is made by the liquidator or purchaser that they have not been complied with in the case of No. 3 turret lathe; but there is nothing in the special case from which it can be gathered that the "future purchases" were manufactured goods, or, if so, that they had the name and address of the manufacturer or vendor plainly attached thereto, or that the subsequent bailments of, or orders for them, were evidenced in writing.

In addition to these defects, it seemed reasonable to assume that the Conditional Sales Act can only protect the conditional sale of the specific chattel mentioned in the order, for it uses the phrase "purchase or consideration money or some stipulated part thereof"—which seems to exclude the purchase money of other chattels.

Further, the conditions in this order for purchase are made to cover "former orders, and orders which may hereafter be given," which seem sharply to conflict with some of the provisions of the Chattel Mortgage Act, R. S. O. (1897) c. 148, s. 11, under which "a conveyance intended to operate as a mortgage of goods and chattels in whatever words the same may be expressed," is brought within the provisions of that Act.

If the conditions in this order for purchase are valid, seeing that they are only known to bailor and bailee, the bailor or vendor could easily evade the provisions of both the Conditional Sales Act and the Chattel Mortgage Act, and thereby gain a secret lien on chattels over the creditors of the bailee. And on this point I would refer to the observations of Boyd, C., in *Banks vs. Robinson*. 15 O. R. at p. 624.

Apart from the fact that the chattels have been sold before this claim was made, and are now in the possession of a purchaser without notice in good faith for valuable consideration, I think for that and the reasons above given, the claimants can only be allowed a lien for the \$120.56 and be allowed to rank as ordinary creditors for the balance of their claim without interest. No costs.

This case is cited in full in Vol. XXX., The Canadian Law Times (April 1910), p. 341.

Re Farmers' Loan & Savings Co.—Ex parte Home Savings & Loan Co. Reported, Can. Law Times, Vol. XXX. p. 357.

As to right to prove loan on stock really owned by insolvent company.

Re Ontario Express Co. Ex parte Spence. Re McKay, March 3rd, 1894. (Master in Ordinary).

Trustee holding shares. Right of beneficiaries to claim as creditors.

See Vol. XXX. Canadian Law Times, p. 352.

Ex parte Hare, 10 Ch. 218.

Proof of claim made by affidavit.

Shaver vs. Cotton, 23 A. R. 426.

A judgment creditor cannot, after a winding-up order, sue a contributory for payment of what he owes on his shares. Such creditor is entitled only to file his claim with the liquidator.

Joynt vs. Mulcair (1899), 9 Que. K. B. 23.

"The appellant, in his quality of member of an extinct corporation, duly summoned to give his advice, and also as a contestant of the petition of the respondent, must be considered as a party to the judgment appealed from and as having an interest to have it reversed.

70. Claims of Clerks and Employees Privileged.—Clerks or other persons in or having been in the employment of the company in or about its business or trade, shall be collocated in the dividend sheet by special privilege over other creditors, for any arrears of salary or wages due and unpaid to them at the time of the making of the winding-up order, not exceeding the arrears which have accrued to them during the three months next previous to the date of such order. R. S., c. 129, s. 56.

This section does not in any way interfere with the *lex loci contractus* being followed in the case of a claim. A lease of property, situated in Quebec, was made in that province, and provided that the same should be void at the option of the lessor on the insolvency of the lessee. By the law of the Province of Quebec upon such insolvency rent not yet exigible by the terms of the lease thereby becomes so. (C. C., Art., 1092; and *Menard vs. Pelletier*, 7 L. N. 15. The lessee became insolvent, and a claim for the whole rent of the unexpired term was allowed. *In re Harte & The Ontario Express & Transportation Co.* (1892), 22 O. R. 510. And see, *in re Gartness Iron Co., ex parte Lord Elphinstone*, L. R. (1870), 10 Eq. 412.

An English decision, *in re English Joint Stock Bank* (*Yelland's Case*), (1867). L. R., 4 Eq. 350, deals with the principle upon which the amount of salary and compensation payable to a manager of a company upon the sudden termination of his engagement should be calculated.

Eastern vs. Boston, 5 E. L. R. 558.

Defendants carried on mining business at J., where S. & Co. were their agents. It was the custom for defendants to give their workmen orders for their wages on S. & Co., who having paid these orders, had them endorsed by the respective workmen. S. & Co. then drew on the defendants for the amount of the orders so paid. Defendants being in fault to their bondholders, a winding-up order was made, and S. & Co., having obtained assignments from the various workmen whom they had paid, sought to establish their claim to preferential lien.

Held:—That they had no right of subrogation legal, conventional, or equitable.

Re Morlock & Cline, Limited; Sarvis vs. Canning's Claims, 23 O. L. R. 165.

"Clerks or other persons." Commercial traveller. Preferred claim for wages and expenses.

Re Oriental Bank, 32 C. D. 366.

All contracts are terminated by the making of the winding-up order. Servants are thereby discharged.

See also *Chapman's Case*, 1 Eq. 346; *re Midland County's Bank* (1905), 1 Ch. 357.

But notice necessary where the employees are continued in service after the order. See *re English Joint Stock Bank*, 3 Eq. 203.

Parker & Clark, at p. 490. Company Law, argue the contrary.

Re Ritchie-Hearn Company, 6 O. W. R. 424.

Words "other person" defined.

Re American Tire Co., Dingman's Case, 2 O. W. R. 29.

A mechanical expert employed also as an inspector and as a sales agent, was not allowed to rank as coming under this section.

Nor an auditor. *Re Ontario Forge Co., Townsend's Case*, 27 O. R. 230.

Re Winter German Opera, 23 T. L. R. 662.

An opera singer *held* to come under the section in the English Act.

Re Western Coal Co., Ltd., 12 D. L. R. 401, 25 W. L. R. 26.

One employed without a definite term of hiring, to haul coal with his own waggon and team, at a fixed sum per ton, who works under the direction and control of his employer, is working for wages so as to make him a preferred creditor under the Companies Winding-Up Ordinance of the N. W. T., Alta., 1911, Ch. 111, section 10.

Scott vs. Silver, 8 O. W. N. 552.

Liquidator of company made garnishee—personal liability for wages of persons employed by liquidator in carrying on business of company after winding-up order—leave to proceed against liquidator—necessity for—motion for prohibition.

Re Hartwick Fur Co., Ltd., Murphy's Claim, 17 D. L. R. 853.

Preferences—wages—commercial traveller—commission.

Miquelon vs. Vilandre Co., 16 D. L. R. 316, 15 Que. P. R. 266.

Employees' priority for wages—auditor.

Allner vs. Lighter, 13 D. L. R. 210.

A salesman is entitled to a preference as for wages under section 70 of this Act as well as under c.c. 2006, in respect of a bonus earned in addition to his salary for the period of three months prior to the winding-up order.

A salesman employed under a yearly hiring by a company is entitled to be collocated as an ordinary creditor to the amount of his unearned salary.

Re S. E. Walker Co., Ltd., 12 D. L. R. 769.

The managing director of a company who also acted as a salesman, is not entitled to a preference under section 10 of Ch. 11 of N. W. T. Ordinances (Alta., 1911), in a winding-up proceeding, where it is impossible to determine what portion of his salary, which was entire, was for his services as salesman (*re Newspaper Proprietary Syndic., Ltd.* (1900), 2 Ch. 349, specially referred to).

A salesman is entitled to a preference where the greater portion of his services were performed in that capacity although he also acted as secretary of the company.

White Star Hotel vs. Turgeon (1916), 17 Que. P. R. 299.

A landlord's claim is preferable to that of clerks upon moveables in leased premises, but does not extend to an indemnity paid by the government. Claims of clerks are privileged under section 70. When they are in conflict with other privileged claims, they are controlled by c. c. 1994 *et seq.* of the Civil Code. A manager is not a clerk within the meaning of section 70 of the Act, but a bartender is.

Girard vs. Garipey (1916), 49 Que. S. C. 234.

The manager of a joint stock company is not a clerk, and has no privileged claim for arrears of salary.

71. Law of Set-Off to Apply.—The law of set-off, as administered by the courts, whether of law or equity, shall apply to all claims upon the estate of the company, and to all proceedings for

the recovery of debts due or accruing due to the company at the commencement of the winding up, in the same manner and to the same extent as if the business of the company was not being wound up under this Act. R. S. c. 129, s. 57.

On the day before a bank suspended payment, a depositor therein gave his cheque drawn thereon to C., who deposited it in another bank for collection, and obtained an advance on it. After suspension the cheque was marked good by the bank, debited to the account of the depositor and credited to that of the second bank. Subsequently, the liquidators of the insolvent bank claimed to set off against the cheque subsequently accruing liabilities of the depositor—*Held*, that there was no right of set-off. *Re Central Bank (Cayley's Case)*, (1889), 17 O. R. 122—*Held*, also, that the case did not come within any of the clauses of the Winding-Up Act relating to fraudulent preferences.

When contributories upon the insolvency of a bank are required to pay their double liability under section 89 of the Bank Act, they cannot set off the amounts to their credit in the books of the bank, but are only entitled to be placed as creditors on the dividend sheet in respect of such claims. *The Liquidators of the Maritime Bank vs. Troop* (1889), 16 S. C. R. 456. And a shareholder in a limited company who is also a creditor on a contract cannot set off the debt due to him, or the dividends which may accrue to him, against calls. But upon payment of all calls due he will rank for dividends like the other creditors. *In re Overend, Gurney & Co. (Grissell's Case)*, (1866), L. R., 1 Ch. 528.

Winding-up proceedings were commenced in December, 1866, and about four months later a shareholder assigned five debentures of the company, notice of the assignment being duly given to the liquidator. In June, 1867, and February, 1868, calls were made on the assignor to an amount in excess of that which was due on the debentures. The calls were not paid, and it was *held* that, on that account, the assignee was not entitled to prove against the company on the debentures. *In re China Steamship Co., ex parte Mackenzie* (1869), L. R., 7 Eq. 240.

As to the necessity for mutuality in order that a claim of a creditor of the company should be set off against a claim of the liquidator, see *re Wiarton Beet Sugar Mfg. Co., McNeill's Case*, 1905, 10 O. L. R., 219.

Re Atlas Loan Co. Ex parte Reserve Fund Claimants.
Can. Law Times, XXX. 371.

Definition of "reserve fund"—nature of capital stock—contributors to reserve fund rank as ordinary creditors after payment of debts. Set-off. Reversed on Appeal, 7 O. L. R. 706.

See also *re Atlas Loan Co. (Claims on Reserve Fund)*, 9 O. L. R. 468.

72. Time for Sending in Claims.—The court may fix a certain day or certain days on or within which creditors of the company may send in their claims and may direct notice thereof to be given by the liquidator, and determine the manner in which notice of the day or days so fixed shall be given by the liquidator to the creditors. R. S., c. 129, s. 59.

73. Creditors required to prove Claims.—The liquidator may give notice in writing to creditors who have sent in their claims to

him, or of whose claims he has notice, and whose claims he considers should not be allowed without proof, requiring such creditors to attend before the court on a day to be named in such notice, and prove their claims to the satisfaction of the court.

2. Disallowance on Default.—In case any creditor does not attend in pursuance of such notice his claim shall be disallowed, unless the court sees fit to grant further time for the proof thereof;

3. Disallowance on Hearing.—If any creditor attends in pursuance of such notice, the court may on hearing the matter allow or disallow the claim of such creditor in whole or in part. 52 V., c. 32, s. 14, 55-56 V., c. 28, s. 1.

74. Distribution of Assets.—After the notices required by the two last preceding sections have been given, and the respective times therein specified have expired, and all claims of which proof has been required by due notice in writing by the liquidator in that behalf have been allowed or disallowed by the court in whole or in part, the liquidator may distribute the assets of the company or any part hereof among the persons entitled thereto and without reference to any claim against the company which shall not have then been sent to the liquidator.

2. As to claims not sent in.—The liquidator shall not be liable to any person whose claim shall not have been sent in at the time of distributing such assets, or part thereof for the assets or part thereof so distributed. R. S., c. 129, s. 60.

The allowance of a claim put in after the time fixed by the court is *ex debite justitie*, and not discretionary. Per Robertson, J., *re Central Bank of Canada (Cayley's Case)* (1889), 17 O. R. 122.

Re Stratford Fuel, etc., Co., Ltd., 13 D. L. R. 64.

The assertion in a winding-up proceeding of two claims in different rights, although pertaining to the same transaction, is not objectionable as double ranking, which is prohibited only where two dividends are sought in respect to the same debt.

Moor vs. Anglo-Italian Bank, L. R. 10 C. D. 681.

There is no rule in bankruptcy that a petitioning creditor who omits in his petition to give an estimate of the value of his security or to state that he will give up his security for the benefit of his creditors in the event of his debtor being adjudicated bankrupt, thereby forfeits the benefit of his security.

Re Leinster Contract Corp. (1903). 1 Ir. R. 517.

Judgment creditor has no priority.

Re David Lloyd & Co., 6 C. D. 339; *re London, etc., Hotel Co.* (1892), 1 Ch. 639.

A secured creditor may sue to enforce his securities.

Re Printing Co., 8 C. D. 535.

He who has any security for his claim upon the property of the company is a secured creditor.

75. Rank of Claims Sent in After the Distribution has been Commenced.—In case any claim or claims shall be sent in to the liquidator after any partial distribution of the assets of the company, such claim or claims, subject to proof and allowance as required by this Act, shall rank with other claims of creditors in any future distributions of assets of the company. R. S., c. 129, s. 60.

Royal Trust Co. vs. Atlantic & Lake Sup. Ry. Co., 13 Can. Exch. R. 42.

The failure of a bondholder to deposit his bonds within a certain period, in the hands of a named trustee, in compliance with the terms of a scheme of arrangement, duly confirmed by the court, deprives him of any privilege attached to his bonds, and he must be ranked with the unsecured creditors.

SECURED CLAIMS.

76. Duty of Creditor Holding Security.—If a creditor holds security upon the estate of the company, he shall specify the nature and amount of such security in his claim, and shall therein, on his oath, put a specified value thereon. R. S., c. 129, s. 62.

Parsons vs. Sov. Bank of Can., 9 D. L. R. 476 (1913), A. C. 160.

In the absence of a liquidation the person of a corporation remains legally intact notwithstanding the appointment by the court of receivers and managers of the company's business made in a bondholder's action to enforce their security.

Royal Trust Co. vs. Atlantic & Lake Sup. Ry. Co. See case cited under section 75.

Royal Trust Co. vs. Baie des Chaleurs Ry. Co., 13 Can. Exch. R. 1.

Railway—insolvency—sale—prior enquiry into claims of creditors—pledge of bonds—trustee for bondholders.

Re Alexander Dunbar & Sons Co., 9 E. L. R. 217 (N. B.).

Assets covered by debentures.

Moor vs. Anglo-Italian Bank, L. R. 10 C. D. 631.

There is no rule in bankruptcy that a petitioning creditor who omits in his petition to give an estimate of the value of his security or to state that he will give up his security for the benefit of his creditors in the event of his debtor being adjudged bankrupt, thereby forfeits the benefit of his stock.

77. Option of Liquidator as to Security.—The liquidator, under the authority of the court, may either consent to the retention by the creditor of the property and effects constituting such security or on which it attaches, at such specified value, or he may require from such creditor an assignment and delivery of such security, property and effects, at such specified value, to be paid by him out of the estate so soon as he has realized such security, together with interest on such value from the date of filing the claim till payment. R. S., c. 129, s. 62.

Re William Hamilton Mfg. Co. (1909), 1 O. W. R. 61.

Held, that the Ontario Bank was entitled to certain securities assigned to them by the insolvent company notwithstanding notice of the assignment had not been given to those liable on the securities.

78. Ranking of Secured Creditor.—In case of such retention the difference between the value at which the security is retained and the amount of the claim of such creditor shall be the amount for which he may rank as aforesaid. R. S., c. 129, s. 62.

79. Security by Negotiable Instrument.—If a creditor holds a claim based upon negotiable instruments upon which the company is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of the three last preceding sections and shall put a value on the liability of the person primarily liable thereon as being his security for the payment thereof;

2. Revaluation.—After the maturity of such liability and its non-payment, he shall be entitled to amend and revalue his claim. R. S., c. 129, s. 62.

Where a creditor who holds acceptances of the company for the amount of his debt, and also debentures as collateral security, he can only prove for the amount really due him, and not for the amount which is secured by the debentures. *In re Blakely Ordinance Co. Metropolitan & Provincial Bank's Claim* (1869), L. R., 8 Eq. 244.

80. Security by Mortgage or Real Property or a Ship.—If the security consists of a mortgage upon ships or shipping, or upon real property, or of a registered judgment or an execution binding real property which is not by some other provision of this Act invalid for any purpose of creating a lien, claim or privilege upon the real or personal property of the company, the property mortgaged or bound by such security shall only be assigned and delivered to the creditor.

(a.) **Assignment with Defective Title.**—Subject to all previous mortgages, judgments, executions, hypothecs and liens thereon, holding rank and priority before his claim, and

(b.) **Under Obligation.**—Upon his assuming and binding himself to pay all such previous mortgages, judgments, executions, hypothecs and liens, and

(c.) **Subject to Indemnity.**—Upon his securing the estate of the company to the satisfaction of the liquidator against any claim by reason of such previous mortgages, judgments, executions, hypothecs and liens. R. S., c. 129, s. 63.

Harrison vs. Nipisiquit Lumber Co., 11 East. L. R. 314.

Bondholders—equitable rights—first charge.

Harrison vs. Nipisiquit Lumber Co., 11 East. L. R. 314.

Bondholders acquired bonds under an agreement that they were

to be secured by a mortgage upon the property of the Nipisquit Lumber Company. The bondholders, who were not responsible for the failure of the company to appoint a competent trustee, were entitled in equity as against the company and its liquidator, to a first charge, as security for the payment of such bonds, upon all the property of the company specified as intended to be so charged in the bonds themselves and in the ineffectual mortgage deed.

81. In Case of Subsequent Claims by.—If there are mortgages, judgments, executions, hypothecs or liens upon such ships or shipping or real property subsequent to those of such creditor, he shall only obtain the property.

(a.) **Consent.**—By consent of the subsequently secured creditors, or

(b.) **Claims filed.**—Upon their filing their claims specifying their security thereon as of no value, or

(c.) **Value Paid.**—Upon his paying the value by them placed thereon, or

(d.) **Company Indemnified.**—Upon his securing the estate of the company to the satisfaction of the liquidator against any claim by reason of such subsequent mortgage, judgments, executions, hypothecs and liens. R. S., c. 129, s. 63.

A secured creditor has a right to apply for and obtain leave to bring an action to enforce his security. It is not optional for a secured creditor to either prove his claim in a winding up or else proceed with an action to enforce it; and if he does commence an action it is still compulsory on him to proceed before the liquidator under sections 81 *et seq.* of the Winding-Up Act. *In re Lenora*, 9 B. C. R., 471.

Re Fort George Lumber Co., 12 D. L. R. 807, 25 W. L. R. 92. (Appeal to Supreme Court of Canada dismissed).

Where under an order of court a liquidator sold a mortgaged vessel free from liens, the mortgagee, and the seamen entitled to a maritime lien on the vessel for wages, have the same right against the fund realized from the sale as they had against the boat.

82. Authority to Retain Necessary.—Upon a secured claim being filed, with a valuation of the security, the liquidator shall procure the authority of the court to consent to the retention of the security by the creditor, or shall require from him an assignment and delivery thereof. R. S., c. 129, s. 64.

DIVIDEND SHEET.

83. Must Provide for privileged and secured Claims.—In the preparation of the dividend sheet, due regard shall be had to the rank and privilege of every creditor, but no dividend shall be allotted or paid to any creditor holding security upon the estate of the company for his claim until the amount for which he may rank as a creditor upon the estate, as to dividends therefrom is established, as herein provided. R. S., c. 129, s. 65.

Good vs. Nipisquit Lumber Co., 12 E. L. R. 89, 11 D. L. R. 850.
Winding-up order—effect on lien claim of a non-creditor.

LIENS.

84. No lien by execution, etc., after commencement of winding up.—No lien or privilege shall be created—

(a) Upon the real or personal property of the company, for the amount of any judgment debt, or of the interest thereon, by the issue or delivery to the sheriff of any writ of execution, or by levying upon or seizing under such writ the effects or estate of the company;

(b) Upon the real or personal property of the company, or upon any debts due or accruing or becoming due to the company, by the filing or registering of any memorial or minute of judgment, or by the issue or taking out of any attachment or garnishee order or other process or proceeding;—

if, before the payment over to the plaintiff of the moneys actually levied, paid or received under such writ, memorial, minute, attachment, garnishee order or other process or proceeding, the winding up of the business of the company has commenced: Provided that this section shall not affect any lien or privilege for costs which the plaintiff possesses under the law of the province in which such writ, attachment, garnishee order or other process or proceeding was issued or taken out." 8 Edw. VII., c. 75, s. 1.

Cross vs. Alberta Brick Co., 1 Alta. R. 103.

A creditor who, prior to the granting of a winding-up order, has served a garnishee summons on a shareholder, and obtained judgment against the company, is entitled to be paid the amount of his judgment out of moneys due by the shareholder for calls on stock at the time of the service of the garnishee summons, in priority to the claims of the liquidator in the winding up proceedings.

Re Ideal Furnishing Co., 17 Man. R. 576.

Sub-section 1 of section 84 of the Winding-Up Act, R. S. C. 1906, Ch. 144, so far as applicable to the rights of an execution creditor under a writ of execution against the goods of a company placed in the sheriff's hands after the commencement of the winding up, is not different in effect from section 66 of the Winding-Up Act as it stood in the former revised statutes of 1886, and the execution creditor cannot proceed to realise his judgment out of the goods of the company:—*Quære*, what would be the result in a case where the sheriff has sold the goods and had the proceeds of the sale in his hands when notice of the petition was served? Under the Act as it stood before the last revision, the money would have gone to the liquidator; but, to obtain that result under the present Act, sub-section 2 of section 84 would have to be read into sub-section 1.

CONTESTATION OF CLAIMS.

85. Claim or Dividend may be Objected to.—Any liquidator, creditor or contributory or shareholder or member may object to any claim filed with the liquidator, or to any dividend declared. R. S., c. 129, s. 67, 52 V., c. 32, s. 15.

86. Objections to be Filed in Writing.—If a claim or dividend is objected to, the objections shall be filed in writing with the

liquidator, together with the evidence of the previous service of a copy thereof on the claimant;

2. **ANSWERS AND REPLIES.**—The claimant shall have six days to answer the objections, or such further time as the court allows, and the contestant shall have three days to reply, or such further time as the court allows. R. S., c. 129, s. 67.

87. Day to be Fixed for Hearing.—Upon the completion of the issues upon the objections, the liquidator shall transmit to the court all necessary papers relating to the contestation, and the court shall then, on the application of either party, fix a day for taking evidence upon the contestation, and hearing and determining the same. R. S., c. 129, s. 67.

88. Costs.—The court may make such order as seems proper in respect to the payment of the costs of the contestation by either party, or out of the estate of the company. R. S., c. 129, s. 67.

89. Default in Answer by Plaintiff.—If, after a claim or dividend has been duly objected to, the claimant does not answer the objections, the court may, on the application of the contestant, make an order barring the claim or correcting the dividend, or may make such other order in reference thereto as appears right. R. S., c. 129, s. 67.

90. Security for Costs.—The court may order the person objecting to a claim or dividend to give security for the costs of the contestation within a limited time, and may, in default, dismiss the contestation or stay proceedings thereon, upon such terms as the court thinks just. R. S., c. 129, s. 67.

DISTRIBUTION OF ASSETS.

91. Distribution of Property of Company.—The property of the company shall be applied in satisfaction of its debts and liabilities and the charges, costs and expenses incurred in winding up its affairs. R. S., c. 129, s. 58.

92. Winding-up Expenses Payable out of Estate.—All costs, charges, and expenses properly incurred in the winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company, in priority to all other claims. R. S., c. 129, s. 91.

Re London Drapery Stores (1898), 2 Ch. 68.

The successful defendant in an action commenced against him by the company and continued by the liquidator, is entitled to costs in full.

Keyes vs. Hanington, Liquidators of Miramichi Pulp & Paper Co., 13 D. L. R. 139.

A claim for money lent the liquidator under an order of a court declaring that the loan should be a first charge on all the

assets of the company, subject only to existing liens, charges or encumbrances, is entitled to priority over the debts and charges of the winding-up proceeding, including liquidators and solicitor's fees; and such rule is not affected by section 92, since it applies only to confer priority over claims existing at the time of going into liquidation.

93. Distribution of surplus of Property of Company.—

The court shall distribute among the persons entitled thereto, any surplus that remains after the satisfaction of the debts and liabilities of the company, and the winding up charges, costs and expenses, and unless it is otherwise provided by law or by the Act, charter or instrument of incorporation, any property or assets remaining after such satisfaction shall be distributed among the members or shareholders, according to their rights and interests in the company. R. S., c. 129, ss. 51 and 58.

It was agreed that those shareholders who contributed all the capital should be repaid the same with interest before the other shareholders, who had received paid-up shares for certain patents and premises, should participate in the profits. A winding-up order was granted before any profits were made—*Held*, that as there was only a provision for a preferential dividend, and as there was no arrangement for the division of the capital on the dissolution of the company, the surplus assets should be distributed between both classes of shareholders *pro rata*, without regard to their right respecting dividends. *In re London India Rubber Co.* (1868), L. R., 5 Eq. 519. As to distribution of surplus, see also *in re Bangor & Portmadoc Slate & Slab Co.* (1875), L. R., 20 Eq. 59. *In re Bridge-water Navigation Co.* (1888), L. R., 39 C. D. 1; (1889), L. R., 14 App. Cas. 525.

Maritime Bank vs. The Queen, 17 S. C. 657.

Payment in full to the Crown.

Mutual Life Association, Wellington's Claim, 18 O. L. R. 411, 13 O. W. R. 1909.

Where an order had been made for the winding up of a life insurance company under the Dominion Winding-Up Act, and the deposits of the company held by the Minister of Finance and the assets held by trustees under the Dominion Insurance Act were in the hands of the liquidator and were being distributed by him, a question arose as to whether payment should be made under policies issued by the company, to the assured or to the beneficiaries:—*Held*, that the intention of the Insurance Act is to provide funds to meet the claims of persons who were resident in Canada at the time the contract with the company was made, and that, both under that Act and the Winding-Up Act, the provisions for the distribution of the fund are directed entirely to questions arising as between the company and the assured and between the Canadian policyholders themselves; there is no interference with rights which may have been acquired by third persons against policyholders; and the liquidator is bound to take notice of assignments of the policies in respect of which he is making a distribution of the fund, and also of declarations in favour of preferred beneficiaries. Under the Ontario Insurance Act, the assured may make changes in the members of the class of preferred beneficiaries who are to take; the right of any beneficiary is not absolute until he shall have survived the assured; and the mere accident that moneys become payable in

respect of the policy in the lifetime of the assured, while it does not impair, does not accelerate, the rights of the beneficiaries. In this case the moneys payable in respect of a policy were ordered to be paid into court, there to be subject to control of the assured as of a trust fund created under section 159 of the Ontario Insurance Act; and, subject thereto, to be paid out, on the death of the assured, to the named beneficiaries then surviving.

Boiteau vs. Ethier et al. (1908), 35 S. C. (Que.) p. 1 (Court of Review). Confirming court of first instance.

Held: "A by-law of a mutual aid society providing for suspension of members who make default in paying their dues, does not thereby exclude them from the society. They preserve their status as members and the rights which flow from it. Therefore, when the society is dissolved and being wound up, they have the same right as other members to be notified and receive their shares (proper deduction for what they owe being made) in the distribution which is made of the excess of assets over liabilities. 2. A liquidator and distribution made without taking account of the suspended members and without giving them notice, gives them a right at common law to bring a single action against the other members jointly to make them pay into court what they have received for the purpose of a new distribution; and this, although each of the claimants has a right to a different sum and each of the defendants has received and must bring into court a different amount."

Mathieu, Pagnuelo and Martineau J. J. Tellier J. in court below.

FRAUDULENT PREFERENCES.

94. Gratuitous Contracts Presumed to be with Intent to Defraud Creditors.—All gratuitous contracts or conveyance or contracts without consideration, or with a merely nominal consideration, respecting either real or personal property, made by a company in respect to which a winding-up order under this Act is afterwards made, with or to any person whatsoever (whether a creditor of the company or not), within three months next preceding the commencement of the winding up or at any time afterwards shall be presumed to have been made with intent to defraud the creditors of such company. R. S., c. 129, s. 68.

95. Contracts Injuring or Obstructing Creditors Presumed to be with Like Intent.—All contracts by which creditors are injured, obstructed or delayed, made by a company unable to meet its engagements and in respect to which a winding-up order under this Act is afterwards made, with a person whether a creditor of the company or not, who knows such inability or has probable cause for believing such inability to exist, or after such inability is public and notorious shall be presumed to be made with intent to defraud creditors of such company. R. S., c. 129, s. 68.

A security given by an insolvent company in payment of a debt due to a director who is aware of the state of the company can be recovered at the instance of the liquidator, even though the director was pressing for payment. The director should resign his office before demanding payment from a company so situated. *Gaslight*

Improvement Co. vs. Terrell (1870), L. R., 10 Eq. 168. In that case it was held that the bill to set aside the security might be filed in the name of the company as plaintiff. (*Ib.*) See also decisions cited under sub-title "Fraudulent Preferences" in notes to section 5, *supra*.

Larue vs. Dohan, 48 Que. S. C. 374.

The reimbursement by a joint stock company, on the eve of being put in liquidation, of advances which have been made to it, and which have benefited its creditors, does not constitute a preferential payment of which the liquidators can subsequently demand the annulment in the name of the creditors.

Kirby vs. Rathbun Co. 32 O. R. 9.

Does the section cover mortgages, etc?

96. Contracts with Consideration Voidable When.—A contract or conveyance for consideration, respecting either real or personal property, by which creditors are injured or obstructed, made by a company unable to meet its engagements with a person ignorant of such inability, whether a creditor of the company or not, and before such inability has become public and notorious, but within thirty days next before the commencement of the winding up of the business of such company under this Act, or at any time afterwards, is voidable, and may be set aside by any court of competent jurisdiction, upon such terms as to the protection of such person from actual loss or liability by reason of such contract, as the court orders. R. S., c. 129, s. 69.

97. Contracts made with intent to Defraud or Delay Creditors Void.—All contracts or conveyances made and acts done by a company, respecting either real or personal property, with intent fraudulently to impede, obstruct or delay the creditors of the company in their remedies against the company or with intent to defraud the creditors of the company or any of them,—and so made, done and intended with the knowledge of the person contracting or acting with the company, whether a creditor of the company or not,—and which have the effect of impeding, obstructing or delaying the creditors in their remedies or of injuring them, or any of them, shall be null and void. R. S., c. 129, s. 70.

Walter vs. Leduc, 8 W. W. R. 360.

Where property is transferred from one company to another, the person who planned the transfer for the transferor company, being the guiding spirit of the transferee company, and the effect of such transfer being to hinder and delay the creditors of the transferor company, the onus of shewing that the transfer was not made with the intent to hinder and delay the creditors of the transferor company, falls upon the transferee company. (*Re Hirth* [1899] 1 Q. B. 612; *re Slobodinsky* [1903] 2 K. B. 517; *Barthels vs. Winnipeg Cigar Co.*, 2 A. L. R. 21; *Mackay vs. Douglas*, L. R. 14 Eq. 106; *ex parte Russell*, 19 Ch. D. 588, referred to).

98. Sale or Transfer in Contemplation of Insolvency.—If any sale, deposit, pledge or transfer is made of any property, real

or personal, by a company in contemplation of insolvency under this Act, by way of security for payment to any creditor,—or if any property, real or personal, movable or immovable, goods, effects or valuable security, are given by way of payment by such company to any creditor, whereby such creditor obtains or will obtain an unjust preference over the other creditors, such sale, deposit, pledge, transfer or payment shall be null and void; and the subject thereof may be recovered back for the benefit of the estate by the liquidator, in any court of competent jurisdiction.

2. Presumption if within Thirty Days.—If such sale, deposit, pledge or transfer is made within thirty days next before the commencement of the winding up under this Act, or at any time afterwards, it shall be presumed to have been so made in contemplation of insolvency. R. S., c. 129, s. 71.

Re Jackson vs. Bassford, Ltd. (1906), 2 Ch. 467.

As to setting aside of a debenture when made just prior to winding up.

On 15th November, W. and McM. deposited in the Central Bank, for collection, a cheque, which was collected the same day. It subsequently appeared that on that date the bank was hopelessly insolvent; that on the previous day the directors had passed a resolution instructing the cashier to apply to other banks for assistance, and deciding to suspend payment if that was refused; that the other banks declined to assist and that the Central Bank did not open its doors on November 16—*Held*, that the depositors were entitled to be repaid the amount of their deposit as being obtained from them by fraud. The depositors were not in the position of creditors of the bank, and therefore it would not be a preferential payment. *Re The Central Bank of Canada (Well's and MacMurphy's Case)*, (1888), 15 O. R. 611.

A depositor may recover from the liquidators the money he deposited on the day the bank suspended payment. *Exchange Bank of Canada vs. The Montreal Coffee House Association* (1886), 2 M. L. R. (S. C.) 141. See also *Craigie vs. Hadley* (1885), 99 N. Y. (Ct. of Appeals) 131. (*Anonymous Case* 1876), 67 N. Y. (Ct. of Appeals), 598. *Dodge vs. Mastin* (1883), 17 Federal Rep. 660.

99. Payments by Company Within Thirty Days.—Every payment made within thirty days next before the commencement of the winding up under this Act by a company unable to meet its engagements in full, to a person knowing such inability, or having probable cause for believing the same to exist, shall be void, and the amount paid may be recovered back by the liquidator by suit or action in any court of competent jurisdiction;

2. Restoration of Security.—If any valuable security is given up in consideration of such payment, such security or the value thereof shall be restored to the creditor upon the return of such payment. R. S., c. 129, s. 72.

A bank suspended payment on 15th September, 1883. Winding-up proceedings were commenced 22nd November, and the winding-up order made 5th December. S. was a depositor in the bank. At the time of the suspension R. & G. H. were indebted to the bank,

which held certain hardware as security. Wishing to realize, the bank sold this hardware to A. H. & Co., and accepted S.'s cheques drawn on his deposit account as payment. A. H. & Co. gave their acceptances to S. and duly paid them. S., being indebted to A. H. & Co., gave them his cheque on the bank in part payment, which the bank accepted from them on 23rd October to retire an overdue bill. In an action by the liquidator to recover from S. under this section, it was held that he could not do so, the reason as regards the first transaction being that S. had received no valuable consideration from the bank which he should be ordered to repay. On 19th November, S. also sold his cheque on the bank for \$320 to his uncle, who was the local manager of the bank, and it was negotiated and accepted by the bank on 23rd November, after winding-up proceedings had been commenced—*Held*, that although it was probably an invalid transaction so far as the person who received the money was concerned, yet there was no payment to S. of anything within the meaning of this section. *The Exchange Bank of Canada vs. Stinson* (1885), 8 O. R. 667.

C. & S., depositors, drew a cheque for \$1,000 on 1st November and gave it to D., who was a debtor of the bank on notes maturing in December and January. S. gave C. and S. mortgage security for the cheque on 31st October. The arrangement was made on 5th October. The cheque was only presented to the bank on 23rd November (the day after winding-up proceedings commenced), when it was accepted in payment of the notes. The liquidators sought to recover the amount paid on the cheque as having been paid to C. and S. after the commencement of winding-up proceedings, and as being an unjust preference—*Held* that there was no payment by the bank to the defendants, and that, therefore, the case was not within the statute. Apart from the \$4,000, C. and S. had \$2,118.03 to their credit until 23rd November. One Creen was being sued by the bank on overdue notes. C. and S. gave him their cheque for \$2,118 on 21st November, receiving in return mortgage security. The cheque was presented and the notes thereby retired on 23rd November—*Held*, that it was not a wrongful payment under the Act to C. and S. *The Exchange Bank of Canada vs. Counsell, et al.* (1885), 8 O. R. 673.

Trusts & Guarantee Co. vs. Munro (1909), 14 O. W. R. 699, 1 O. W. N. 52.

A trustee invested money in a company of which he was president. On the eve of the company being wound up, the president withdrew \$1,969.61, from the company to protect his *cestuis que trust*, and give them a preference:—*Held*, that section 99 of the Winding-Up Act applied and that the plaintiff company was entitled to recover from defendant the amount withdrawn. *Re Stubbins* (1881), 17 Ch. D. 58, and *ex parte Taylor* (1886), 18 Q. B. D. 295, distinguished. Judgment of Boyd, C. at trial 16 February, 1909, affirmed.

100. Debts of Company Transferred to Contributories or Persons Indebted to the Company.—When a debt due or owing by the company has been transferred within the time and under the circumstances in the last preceding section mentioned, or at any time afterwards, to a contributory, or to any person indebted or liable in any way to the company, who knows or has probable cause for believing the company to be unable to meet its engagements, or in contemplation of its insolvency under this Act, for the

purpose of enabling such contributory or such person indebted or liable to the company to set up, by way of compensation or set-off, the debt so transferred, such debt shall not be set up by way of compensation or set-off against the claim upon such contributory or person. R. S., c. 129, s. 73. 52 V., c. 32, s. 16.

By 52 Vic., c. 32, s. 16, it is enacted that the foregoing section "shall apply to all persons indebted or in any way liable to the company, in the same manner and to the same extent as it now applies to contributories."

Y., in making a deposit on a Government contract, gave a marked cheque for \$8,000; subsequently this was cancelled and the bank issued a deposit receipt for the same amount, Y. afterwards giving the bank his demand note as security for the receipt. Y. was a shareholder in the bank. When it went into liquidation the Government required him to give better security, and upon his doing so assigned to him the deposit receipt—*Held*, that as maker of the note, Y. was a mere debtor, and not a contributory, and that the fact, that as a shareholder he was a contributory, did not alter his position regarding this independent transaction; therefore section 73 did not apply, and he was entitled to set off the deposit receipt against his note held by the liquidators of the insolvent bank. *Re The Central Bank of Canada (York's Case)* (1888), 15 O. R. 625. (In this case the decision of the Supreme Court of Canada in *Ings vs. President Bank of Prince Edward Island* (1885), 11 S. C. R. 265 was followed).

Held, further, that the prohibition in the Act against acquiring debts for the purpose of set-off applies only to the case of contributories. As regards debtor the law of set-off is applicable as if the company was a going concern. In this case the right of set-off virtually arose by reasons of dealings prior to the set-off, for Y. being bound to give security to the satisfaction of the Government, in taking up the deposit receipt and giving better security, was only doing what he was obliged to do by a prior *bona fide* engagement. And see, *re Moseley, etc., Coke Co. (Barrett's Case)* 4 De G. J. & S. 756.

APPEALS.

101. Appeals in Case of.—Except in the Northwest Territories, any person dissatisfied with an order or decision of the court or a single judge in any proceeding under this Act may;

(a.) **Future Rights.**—If the question to be raised on the appeal involves future rights, or

(b.) **Principal.**—If the order or decision is likely to affect other cases of a similar nature in the winding-up proceedings, or

(c.) **Amount.**—If the amount involved in the appeal exceeds five hundred dollars, by leave of a judge of the court, to which the appeal lies, appeal therefrom. R. S., c. 129, s. 74. 5 Geo. V. cap. 21.

Lapierre vs. La Banque de St. Jean et Bienvenue (1910), 12 Que. P. R. In appeal, p. 152.

Held, under the Winding-Up Act (1906). No appeal to the Privy Council is authorized.

Re Elliott & Son, Ltd., 9 O. W. N. 51.

Dismissal—leave to appeal—refusal of.

Re Elliott & Son, Ltd., 9 O. W. N. 51.

Dismissal of petition to wind up—leave to appeal—refusal.

Re Canadian Mail Order Co. (Meakin's Case), 19 O. W. R. 111.

Where a winding-up order is under the Ontario Act, there is no appeal from the decision of a judge of the High Court.

Re Cushing Sulphite Fibre Co. (1905), 38 N. B. R. 581.

The exercise of discretion in granting or refusing leave by the judge having charge of the winding-up proceedings may be reviewed on appeal. A judge other than the judge directing the winding-up proceedings may grant leave to appeal from his order, and any judge has the abstract right to make orders in a winding-up proceeding, but ought not to do so unless specially requested by the judge in charge, or under exceptional circumstances. The appeal from the order of a judge in charge of winding-up proceedings is to the court, and cannot be varied or rescinded by an order of a single judge, though made in excess of his jurisdiction under the Winding-Up Act.

Re Belding Lumber Co., 23 O. L. R. 255.

Where the court granted the second of two petitions to wind up a company, because the affidavit in support of the first was not filed before service, leave to appeal was refused, because the Act does not contemplate that such an initiatory contest should be tied up by an appeal in order to settle a point of discretionary practice.

Brayley vs. Ross (1907), 9 Que. P. R. 103, K. B.

An appeal from a decision or order of the Superior Court or of a judge thereof, in any proceedings under the Winding-Up Act of Canada may only be taken to the Court of King's Bench by leave of a judge of the Superior Court.

The Standard Mutual Fire Insurance Co. vs. The Dominion Mutual Fire Insurance Co. (1910), 11 Que. P. R. 386. (Review).

Held:—An appeal lies to the Court of Review from a judgment of the Superior Court in a case to which an insurance company which is being wound up is a party (Cf. *The Montreal Coal & Towing Co. in liquidation vs. The Standard Life Assurance Co.*, 6 Que P. R. 243).

No authorization from the court is necessary for such appeal.

C. P. 52; R. S. C., cap. 144, ss. 101, 102.

Re McLean, Stinson & Brodie, Ltd. See under section 110.

Re Hamilton Mfg. Co., Ltd., *Hall's Case*, 4 O. W. N. 421.

Appeal from master.

Brayley vs. Ross (1907), Q. R., 17 K. B. 152.

The right of appeal from judgments can only be exercised under the conditions and in the manner provided by the law permitting it. Hence, when the Winding-Up Act provides that an appeal will lie from orders and decisions rendered under it by leave of a judge of the court appealed from, an appeal taken without permission or even with that of a judge of the Court of Appeal is informal and will be rejected.

Pontbriand Co. vs. Cosky, 14 Que. P. R. 19.

An order for winding up a company being susceptible of appeal or opposition, cannot be set aside for irregularities by *requête civile*. A winding-up order made by a Superior Court judge cannot be set

aside by another judge of the same court, but may be by the Court of Appeal.

Dostaler vs. Mutual Fire Insurance Co. of Can. (1909), 11 Que. P. R. 303.

When a mutual fire insurance company appeals to the Supreme Court from a judgment of the Court of Review putting it into liquidation, its property will, during such appeal, be administered by a sequestrator, unless it furnishes security that it will conform to the judgment of the Supreme Court.

Deacon vs. Kemp Manure Spreader Co., 15 O. L. R. 149 (D. C.) See section 19.

"The High Court of Justice for Ontario has no jurisdiction to intervene and set aside or vacate or declare invalid what has been done by the County Court judge under the Ontario Winding-Up Act. R. S. O. 1897, cap. 222.

Re Compagnie des Theatres vs. Turgeon, 10 Que. P. R. 215.

Held:—"There is no appeal to the Superior Court in Review from a judgment rendered by a judge of the Superior Court exercising the powers given by the Winding-Up Act."

La Banque de St. Jean, etc., re Succession Catudal (1911), 12 Que. P. R. 353.

There is no appeal to the Court of Review from any order or decision of the Superior Court or of a single judge thereof in any proceedings under the Winding-Up Act. (R. S. C. Ch. 144), but only to the Court of King's Bench.

See *La Cie. des Theatres vs. Turgeon*, 10 Que. P. R., 215. Compare, *Standard Mutual Fire Insurance Co. vs. Dom. Mutual Fire Insurance Co.*, 11 Que. P. R., 386. *The Montreal Coal & Towing Co. vs. The Standard Life Assurance Co.*, 6 Que. P. R., 243.

102. Court.—Such appeal shall lie,

(a.) **Ontario.**—In Ontario, to the Court of Appeal for Ontario;

(b.) **Quebec.**—In Quebec, to the Court of King's Bench; R. S., c. 129, s. 74;

(c.) **Manitoba.**—In Manitoba, to the Court of Appeal for Manitoba;

(d.) **Other places.**—In any of the other provinces, or the Yukon Territory, to a Superior Court *in banc*. 7-8 Edw. VII., c. 74, s. 1.

La Pierre vs. Banque de St. Jean, 12 Que. P. R. 152.

Under the Winding-Up Act (1906), no appeal to the Privy Council is authorized.

La Banque de St. Jean vs. Bienvenue, 12 Que. P. R. 353.

There is no appeal to the Court of Review, but only to the Court of Appeal.

103. Northwest Territories.—In the Northwest Territories any person dissatisfied with an order or decision of the court or a single judge, in any proceeding under this Act, may, by leave of a judge of the Supreme Court of Canada, appeal therefrom to the Supreme Court of Canada. R. S., c. 129, s. 74.

104. Practice—Security.—All appeals shall be regulated, as far as possible, according to the practice in other cases of the court appealed to; but no appeal hereinbefore authorized shall be entertained unless the appellant has, within fourteen days from the rendering of the order or decision, or within such further time as the court or judge appealed from or, in the Northwest Territories, a judge of the Supreme Court of Canada, allows, taken proceedings therein to perfect his appeal, nor unless, within the said time, he has made a deposit or given sufficient security, according to the practice of the court appealed to that he will duly prosecute the said appeal and pay such damages and costs as may be awarded to the respondent. R. S., c. 129, s. 74.

Application was made for a winding-up order against a company whose assets were already being realized under a provincial statute. The court granted the order, appointed the receiver in the former proceedings interim liquidator, and referred the appointment of a permanent liquidator to the master. The order also directed that certain accounts which had been taken in the former proceedings should, so far as they were applicable, be adopted in the winding-up proceedings under the Dominion Act. On appeal it was held that this was an order which could be appealed from as "involving future rights." *Re Union Fire Insurance Co.* (1886), 13 A. R. 268. See per Osler, J. A., pp. 294-5.

When a judge decides that a certain portion of the Act is not *ultra vires*, and on that ground grants a winding-up order, that order can only be set aside by a Divisional Court, and the petition for its rescission should not be presented to another judge sitting alone: *In re Lake Superior Native Copper Co., Ltd., re Plummer* (1885), 9 O. R. 277, per Proudfoot, J., at pp. 280-1.

In England it has been held that the restriction of appeals to those in which notice has been given within a certain time from the date of the order appealed from does not apply to an appeal from any order made on the original petition for winding up. *In re Universal Bank* (1866), L. R., 1 Ch. 428.

The court may reverse an order made in winding-up proceedings although more than the time limited by the statute has elapsed since the order was made. *In re Estates Investment Co., ex parte Turnley & Oliver* (1869), L. R., 8 Eq. 227.

In England it is the court appealed to which may extend the time for appealing; and it may do so even when the time limited by the statute has expired. *In re Barned's Banking Co., Banner vs. Johnson* (1871), L. R., 5 H. L. 157. Under our Act it is the court appealed from which is intrusted with the power of extending the time for an appeal.

105. Dismissing Appeal.—If the party appellant does not proceed with his appeal, according to this Act and the rules of practice applicable to the court appealed to on the application of the respondent, may dismiss the appeal, with or without costs. R. S., c. 129, s. 75.

106. Appeal to Supreme Court of Canada.—An appeal, if the amount involved therein exceeds two thousand dollars, shall, by

leave of a judge of the Supreme Court of Canada lie to that court from,

(a) The Court of Appeal in the provinces of Ontario, Manitoba and British Columbia (9-10 Edw. VII., c. 62, s. 2).

(b) The Court of King's Bench in Quebec, or

(c) A Superior Court in banc, in any of the other provinces or in the Yukon Territories. R. S., c. 129, s. 76.

Leave to appeal *per saltum*, under the Supreme Court Act cannot be granted in a case under the Winding-Up Act. An application under the Winding-Up Act for leave to appeal from a judgment of the Supreme Court of N.B. was refused where the judge had made no formal order on the petition for a winding-up order and the proceedings before the full court were in the nature of a reference rather than of an appeal from his decision. *In re Cushing Sulphite Fibre Co.*, 1905, 36 S. C. R., 494.

A judgment setting aside an order, made under the Winding-Up Act, for the postponement of foreclosure proceedings, and directing that such proceedings should be continued is not a final judgment within the meaning of the Supreme Court Act and does not involve any controversy as to a pecuniary amount. *In re Cushing Sulphite Fibre Co.*, 1906, 37 S. C. R., 173.

A judgment refusing to set aside a winding-up order does not involve any appeal and leave to appeal to the Supreme Court cannot be granted. *Cushing Sulphite Fibre Co. vs. Cushing*, 1906, 37 S. C. R., 427.

Re Ontario Sugar Co., McKinnon's Case, 44 Can. S. C. R. 659.

Leave to appeal to the Supreme Court of Canada from a judgment in proceedings under the Winding-Up Act will not be granted, though the amount in controversy exceeds \$2,000, if no important principle of law, nor the construction of a public Act, nor any public interest is involved, especially if the judgment sought to be appealed against appears to be sound.

PROCEDURE.

107. Describing Liquidator.—In all proceedings connected with the company a liquidator shall be described as the "liquidator of the (*name of company*)" and not by his individual name only. R. S., c. 129, s. 29.

The Comet Motor Co., Ltd. vs. Dominion Mutual Fire Insurance Co. (1910), Que. P. R., p. 314.

"If, since the institution of the action, an insurance company, defendant, has been put into liquidation, a motion by plaintiff to make the liquidator a party to the suit will be granted, but the liquidator must be summoned in the ordinary way.

Fecteau vs. The Ideal Confectionery Co.

The liquidator of an insolvent company cannot be condemned to take up an instance in place of such company, because it no longer exists, nor with it, because he is not obliged to continue a case taken against the company. (*See Comet Motor Co. vs. Dom. Fire Ins. Co.*, 11 Que. P. R. 314, Fortier, J.).

The liquidator cannot be condemned to take up the instance in his own name.

108. Similar to ordinary Suit.—The proceedings under a winding-up order shall be carried on as nearly as may be in the same manner as an ordinary suit, action or proceeding within the jurisdiction of the court. 52 V., c. 32, s. 21.

109. Powers of Court Exercised by a Single Judge.—The powers conferred by this Act upon the court may, subject to the appeal in this Act provided for, be exercised by a single judge thereof; and such powers may be exercised in chambers, either during term on in vacation. R. S., c. 129, s. 77.

DeLorimier vs. The Can. Gas & Oil Co., etc. (1908), 34 Que. S. C. 381, Cooke, J.

The powers given to the Superior Court by the Winding-Up Act can be exercised by a judge in chambers.

See *re Toronto Brass Co., Ltd.*, 18 Ont. P. R. 248, cited under section 13.

110. Court may Refer Matters.—After a winding-up order is made, the court may subject to an appeal, according to the practice of the court in like cases from time to time as to the court may seem meet by order of reference refer and delegate, according to the practice and procedure of the court, to any officer of the court, any of the powers conferred upon the court by this Act. 52 Vic., c. 32, s. 20.

When a claim is made for rent, and the liquidator attacks it on the grounds that the conveyance under which the claimant assumes to be the owner of the premises is a fraudulent preference, and that the alleged lease was never executed, the master has no jurisdiction to adjudicate upon the points thus raised. The proper course is for the liquidator to proceed by way of action under section 31. *In re The Sun Lithographing Co. (Farquhar's Claim)*, (1892), 22 O. R. 57.

Under the Ontario Winding-Up Act the security must be given within eight days. It was held that there was a sufficient compliance with the Act when a bond good in form with proper sureties was filed on the last of the eight days though not allowed by the judge; but that the person so filing a bond which was not allowed ran the risk of losing his right of appeal if the bond proved to be defective. *Re Union Fire Insurance Co* (1882), 7 A. R. 783.

Re McLean, Stinson & Brodie, Ltd., 2 O. W. N. 435.

There is no provision for any interlocutory determination as to matters of procedure, save as may be permissible under section 110. And a motion for leave to appeal from an interlocutory order of a judge in the matter of a pending petition for a winding-up order, but before order made, was refused.

See section 101.

111. Service of Process out of Jurisdiction.—The court shall have the power and jurisdiction to cause or allow the service of process or proceedings under this Act to be made on persons out of the jurisdiction of the court in the same manner, and with the like effect, as in ordinary actions or suits within the ordinary jurisdiction of the court. 52 V., c. 32, s. 19.

112. Order of Court to be Deemed Judgment.—Every order of the court or judge for the payment of money or costs, charges or expenses made under this Act shall be deemed a judgment of the court, and may be enforced against the person or goods and chattels, lands and tenements of the person ordered to pay, in the manner in which judgments or decrees of any superior court obtained in any suit may bind lands or be enforced in the province where the court making the same is situate. 58-59 V., c. 18, s. 1.

113. Ordinary Practice in Case of Discovery Available.—The practice with respect to the discovery of assets of judgment debtors from time to time in force in the superior courts or in any superior court in the province where any such order is made, shall be applicable to and may be availed of in like manner for the discovery of the assets of any person who by such order is ordered to pay any money or costs, charges or expenses. 58-59 Vic., c. 18, s. 1.

114. Attachment and Garnishment of Debts.—Debts due to any person against whom such order for the payment of money, costs or expenses has been obtained may, in any Province where the attachment and garnishment of debts is allowed by law, be attached and garnisheed in the same manner as debts in such Province due to a judgment debtor may be attached and garnisheed by a judgment creditor. R. S., c. 129, s. 79.

115. Witnesses' Attendance—How Secured.—In any action suit, proceeding or contestation under this Act, the court may order the issue of a writ of *subpoena ad testificandum* or of *subpoena duces tecum*, commanding the attendance, as a witness, of any person who is within Canada. R. S., c. 129, s. 80.

116. Arrest of Absconding Contributory or Official and Seizure of his Goods, Chattels and Books.—The court may, at any time before or after it has made a winding-up order upon proof being given that there is reasonable cause for believing that any contributory or any past or present director, manager, officer or employee of the company is about to quit Canada or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such person to be arrested, and his books, papers, moneys, securities for money, goods and chattels to be seized, and him and them to be safely kept until such time as the court orders. R. S., c. 129, s. 52.

When it appeared that a contributory was about to sell his goods for the purpose of evading a call, the court read this section alternatively, and made an order for the seizure of his goods, but refused to order his arrest upon a mere hearsay statement of his intention to leave the country. *In re Imperial Mercantile Credit Co.* (1867), L. R., 5 Eq. 264.

Re McLean, Stinson & Brodie, Ltd., 2 O. W. N. 294.

Held, the president of a company must answer questions relating to an alleged conspiracy, to which he was said to be a party, to bring about an apparent state of insolvency of the company petitioned against.

Re Baynes Carriage Co. (No. 2). 8 D. L. R. 309.

The petitioners for a winding-up order are not entitled to a preliminary order that certain of the company's officers should produce on their examination, not yet entered upon as compulsory witnesses in support of the petition, the books of the company and the auditor's reports as the extent to which the petitioners may be entitled to use such books and documents cannot be decided until the course of the cross-examination is known.

See section 135.

117. Examination of Persons having Effect of Company, or Information.—The court may, after it has made a winding-up order, summon before it or before any person named by it, any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, estate or effects of the company. R. S., c. 129, s. 81.

Re Sovereign Bank of Can., Newman's Case, 35 O. L. R. 577.

Sec. 117 of the Winding-Up Act confers a special power of inquisitorial character, intended to be used by the liquidator, acting under a winding-up order, for his own guidance in the conduct of the liquidation. But, in certain circumstances, there may be some right of discovery open to a person charged in the winding-up as a contributory. In this case it was directed, upon an appeal, that an official referee, before whom the reference under an order for the winding up of a bank was pending, should consider the application of five persons whose names were placed by the liquidator upon the list of contributories, for leave to examine for discovery the former general manager of the bank in the view that the applicants might have a claim to invoke the aid of sec. 117.

118. Persons Summoned Refusing to Attend.—If any person so summoned, after being tendered a reasonable sum for his expenses, refuses, without a lawful excuse, to attend at the time appointed, the court may cause such person to be apprehended and brought up for examination. R. S., c. 129, s. 81.

119. Production of Papers.—The court may require any such officer or person to produce before the court any book, paper, deed, writing or other document in his custody or power relating to the company. R. S., c. 129, s. 81.

120. Lien on Documents.—If any person claims any lien on papers, deeds, writings or documents produced by him, such production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding up, to determine all questions relating to such lien. R. S., c. 129, s. 81.

When a judge has ordered a person to be summoned for

examination on the ground that he believes him capable of giving information, etc., an appellate court will not interfere with this exercise of his discretion except in an extreme case. *In re Gold Co.* (1879), L. R., 12 C. D. 77. And it has been held that the only ground upon which a person so summoned can contest the validity of the summons is that of want of jurisdiction; and that if the jurisdiction exists the witness has no *locus standi* to appeal against the order. *In re Silkstone & Dodworth Coal & Iron Co. (Whitworth's Case)*, (1881), L. R., 19 C. D. 118. But see, *In re North Australian Territory Co.* (1890), L. R., 45 C. D. 87. A mere creditor of the company who is not shown to be capable of giving information of the nature referred to in the section is not a person to be examined. *In re Accidental & Marine Insurance Corporation* (1867), L. R., 5 Eq. 22. When shares have been transferred to the name of an infant, the broker who acted in the transfer is a proper person to be summoned in order that he may explain the circumstances of the transaction. *In re Mercantile Credit Association (Clement's Case)*, (1869), L. R., 13 Eq. 179.

Any person indebted to a contributory may be examined as to the latter's means. *In re Land Credit Co. of Ireland (Trower & Lawson's Case)*, (1872), L. R. 14 Eq. 8. The judge granting the summons may direct that the examination shall be confined within certain limits. *In re Silkstone & Dodworth Coal & Iron Co. (Whitworth's Case)*, *supra*.

The manager of a bank where a contributory has had an account may be examined and obliged to produce any books which may throw light on the account. *In re Contract Corporation (Druitt's Case)* (1872), L. R., 14 Eq. 6.

121. Examination on Oath.—The court or person so named may examine, upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought up in manner aforesaid, concerning the affairs, dealings, estate or effects of the company, and may reduce to writing the answers of any such person, and require him to subscribe the same. R. S., c. 129, s. 82.

Canadian Arts Association vs. Prevost, Q. R., 20 K. B. 227.

A creditor whose claim is in litigation is not a creditor who has "claims indisputable, future certain, etc." He cannot procure a winding-up order.

122. Inspection of Books and Papers.—After a winding-up order has been made, the court may make such order for the inspection, by the creditors, shareholders, members or contributories of the company, of its books and papers, as the court thinks just.

2. Limitation of Inspection.—Any books and papers in the possession of the company may be inspected in conformity with the order of the court, but not further or otherwise. R. S., c. 129, s. 54.

The inspection is only to be ordered for the purposes of the winding up and for the benefit of those interested therein, and not for the purpose of enabling individual shareholders to establish personal claims against the directors. The section refers only to books, etc., in the possession of the company, and does not empower the court to adjudicate on the ownership of books or papers in the

possession of a third party and claimed by him to be his lawful property. *In re North Brazilian Sugar Factories* (1887), 37 C. D. 83.

123. Officer of Company, Mis-applying Money—Order Compelling Repayment.—When, in the course of the winding up of the business of a company under this Act, it appears that any past or present director, manager, liquidator, receiver, employee or officer of such company has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally liable, examine into the conduct of such director, manager, liquidator, receiver, officer or employee, and upon such examination, may make an order requiring him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest, at such rate as the court thinks just, or to contribute such sums of money to the assets of the company, by way of compensation in respect of such misapplication, retention, misfeasance or breach of trust, as the court thinks fit. R. S., c. 129, s. 83.

The powers of a liquidator under this section are wider than were those of the company itself before the winding-up order. See *In re National Funds Assurance Co.* (1878), L. R., 10 C. D. 113. And per Lord Hatherly in *Waterhouse vs. Jamieson* (1870), L. R., 2 H. L. (Sc.) 29. But see remarks of Lord Westbury and Lord Chelmsford in the latter case, to the effect that the liquidator merely stands in the place of the company, and in enforcing the rights of creditor, can only succeed where the company would have succeeded.

The executors of deceased directors cannot be proceeded against under this section, as they are not officials of the company. *In re East of England Bank (Fellom's Executors' Case)* (1865), L. R., 1 Eq. 219. But when some of the directors alleged to be liable under the section are dead, a summons may be taken out against the surviving directors. *In re British Guardian Life Assurance Co.* (1880), L. R., 14 C. D. 335.

When a director of a company which becomes insolvent withdraws money as remuneration to which it is claimed he is not entitled, the matter may be investigated by the master, who has jurisdiction by virtue of this section to make such inquiry, and no formal objection should be allowed to affect the proper operation of the section. (See also subsection 2 of section 77). *Re Bolt & Iron Co. (Livingstone's Case)* (1887), 14 O. R. 211; (1889), affirmed on appeal, 16 Ont. A. R. 397.

A director of a company who, having a judgment and execution against its property, acting in good faith, purchases the same at a sale by the mortgagees under a power of sale and resells at a profit, is a trustee of the property for the company (since he could not purchase for his own benefit), and is liable to the liquidator for profit made on the resale. The fact that he appeared at the sale, and thus hampered the bidding, was a breach

of trust within the meaning of the section; as was also his refusal to pay over or account for what he made by the subsequent sale. *Re Iron Clay Brick Manfg. Co. (Turner's Case)* (1889), 19 O. R. 113.

In 1867 Lord Romilly, M.R., held that no order compelling a director or officer of a company to refund any moneys he had misapplied could be made under this section unless the case against such director or officer was clearly and distinctly made out and no question of law was involved. *In re Royal Hotel Co. of Great Yarmouth* (1867), L. R., 4 Eq. 244. But in 1869, Selwyn, L. J. and Gifford, L. J., held that the court certainly had full power under the section to compel a director to refund in any case where he was guilty of having misapplied the moneys of the company, and that there was no such limitations on that jurisdiction as were alleged by Lord Romilly in the case above cited. *In re Mercantile Credit Co. (Stringer's Case)* (1869), L. R., 4 Ch. 475; Selwyn, L. J., said:—

"It appears to me that if we had now to draw a clause in the wildest and fullest manner it would be very difficult to conceive anything more large or comprehensive than the words of the 165th (83rd) sections.

In that case the directors were not ordered to refund, because it was decided that the estimate on which the dividends had been voted was *bona fide*; but the principle, that the court had power to order such repayment in a case where dividends had been paid out of capital, or where the directors had otherwise misapplied the moneys of the company, was fully established, and was adopted in later cases. See *In re County Marine Insurance Co. (Rance's Case)* (1870), L. R., 6 Ch. 104. And, in *re Alexandra Palace Co.* (1882), 21 C. D. 149.

A person who, being aware of promotion money having been improperly paid on the formation of a company, though not a party to such payment, afterwards becomes a director and takes no steps to recover the money for the company, does not thereby become liable for wilful default or misfeasance under this section. *In re Forest of Dean Coal Mining Co.* (1878), 10 C. D. 450.

If directors apply the moneys of the company for purposes which are *ultra vires*, they are personally liable for a breach of trust: but, if the moneys are applied in a manner which might be sanctioned by the company, a clear case of misfeasance must be established to render them personally liable for the losses thus caused to the company. *In re Faure Electric Accumulator Co.* (1888), 40 C. D. 141.

For several years the directors of a company presented at the general meetings reports in which debts known by them to be bad were entered as assets, an apparent profit being thus made out. Acting on the faith of these reports, the shareholders voted dividends which were paid by the directors. In the winding-up proceedings the liquidator applied under this section for an order calling on the directors to replace the amount of dividends thus paid out of the capital—*Held*, (1) That even if the shareholders had known the true facts, their ratification of the payment of dividends would only have bound them individually, for the act was one which was *ultra vires* the company, and therefore could not be adopted or ratified by the company. (2) That the fact that the capital thus improperly used was divided amongst the shareholders did not protect the directors, and that the liquidator could compel the directors to replace the money, as the company

itself could have done before the commencement of winding up proceedings. (3) That the directors could not set off (sec. 57) money due them from the company against the moneys they were thus ordered to replace. (4) That the claim was for a breach of trust, and the Statutes of Limitations could not be set up. *In re Exchange Banking Co. (Flitcroft's Case)*, (1882), 21 C. 519.

Three minors, at the direction of their father, applied for shares of a company of which he was a director. Upon allotment, he gave them the money then payable. No dividends were ever paid, and a winding-up order was made before any of the minors came of age. They were placed upon the list of contributories, but, when it was discovered, it was held that the father was liable for the calls in arrears, as it was a loss occasioned to the company by his breach of duty as a director in having shares allotted to infants. *In re Crenner & Wheel Abraham United Mining Co., ex parte Wilson* (1872), L. R., 8 Ch. 45.

The mere acting as a director without the necessary share qualification is not, in the absence of some misconduct injurious to the interests of the company, a misfeasance under this section. The section creates no new right, but only provides a summary method of dealing with directors guilty of acts for which they are liable to an action. *In re Canadian Land Reclaiming & Colonizing Co. (Coventry and Dixon's Case)* (1880), 14 C. D. 660.

Held, that a former owner of bonus shares, which he had before the winding up transferred to persons entitled to hold them as fully paid up, is not liable to be placed on the list of contributories in respect to them, unless subjected to such liability by the Act under which the company was created or some act relating thereto; *Semble*, however, that such a shareholder, if a director, commits a breach of trust in being a party to the attornment of the shares as fully paid up, as well as in putting them off on his transferees to the prejudice of the company as fully paid up shares; and such a case is a proper one for an order under sec. 123 for contribution by him by way of compensation in respect of such breach of trust. There is no right of set-off against a sum ordered to be paid under the authority of this section. *In re Wiarton Beet Sugar Co. (Freeman's Case)*, 1906, 12 O. L. R., 149.

Re Manes Tailoring Co., 11 O. W. R. 498.

Misfeasance and damage to the company must be shewn.

Re Manes Tailoring Co. (Crawford's Case), 13 O. W. R. 829.

C. subscribed for 300 shares of stock in this company of the par value of \$10 each. He subscribed \$25 towards incorporation expenses, which had been applied as a payment on his stock. At the first meetings of directors this stock was allotted to C. as fully paid up. Later 25 such paid-up shares were transferred to C. When the company was apparently solvent he transferred these shares to M., receiving therefor \$150, and withdrew from the company. As the shares had been transferred long before the winding up he was held not to be a contributory.

The liquidator then applied under section 123 to have him and other directors held jointly and severally liable for misfeasance in issuing this stock as fully paid up. *Held*, he was liable only for the profit of \$125 he made on transfer to M.

124. Dispensing with Notice.—The court may, by any order made after the winding-up order and the appointment of a liquidator, dispense with notice to creditors, contributories, share-

holders or members of the company required by this Act, where in its discretion such notice may properly be dispensed with. 52 V., c. 32, s. 11.

Stimson vs. The North West Cattle Co. (1902), 14 K. B. 279.

The power given to the court by sec. 11 of 52 Vict., ch. 32, to dispense with notices, etc., does not extend to that required for the appointment of a liquidator under section 20 of the former Act. See section 27.

Re Men's Wear, Ltd., 22 D. L. R. 530.

It is advisable that the liquidator for the winding up of a company be a disinterested party having no claims against and no share in the company. (*Re Central Bank of Can.*, 15 Ont. R. 309, followed).

125. Courts and Judges Auxiliary—Transfer from one Court to Another.—The courts of the various Provinces and the judges of the said courts respectively, shall be auxiliary to one another for the purposes of this Act; and the winding up of the business of the company or any matter or proceeding relating thereto may be transferred from one court to another, with the concurrence, or by the order or orders, of the courts, or by an order of the Supreme Court of Canada. R. S., c. 129, s. 84.

E. g., when the Exchange Bank of Canada was being wound up under the Act in Quebec, actions brought by the liquidator to upset certain proceedings on the part of the local manager of the bank at Hamilton and his nephew (who had a joint deposit account), were taken in Ontario by leave of the Superior Court of the Province of Quebec. See *Exchange Bank of Canada vs. Stinson* (1885), 8 O. R. 667. And *Exchange Bank of Canada vs. Counsell* (1885), 8 O. R. 673 (noted under sec. 99).

Brewster vs. Can. Iron Corp., Ltd., 7 O. W. N. 128.

Application for leave to proceed with action brought in Ontario—forum.

The head office of the company was in Quebec. The company carried on business in Ontario as well as Quebec. This action was brought in the Supreme Court of Ontario, in respect of the death of plaintiff's son, which occurred at the company's works in Ontario. After the commencement of the action, an order was made by a Quebec Court for the winding up of the company under the Dominion Winding-up Act; and plaintiff applied to a judge of the Supreme Court of Ontario, for leave to proceed. The application was refused; it being held, that the application should be made to the Quebec Court in the winding-up proceedings, and that sec. 125 of this Act did not authorize the Ontario Court, to entertain the application.

Re Dome Lode Development Co., 17 W. L. R., 610 (Y. T.).

Order given by High Court of Justice for Ontario to wind up a company. The provisional liquidator applied to a judge of the Territorial Court of the Yukon Territory for an order directing the sheriff to release goods and chattels of the company held by him under a writ of *fi. fa.* issued under a judgment in the Territorial Court. *Held*, under secs. 125, 126 and 127, there was no jurisdiction to make the order applied for; the winding up not

having been transferred by order to the Territorial Court; and that court could not assume jurisdiction upon the consent of the parties.

126. Order of one Court may be Enforced by Another.—

When any order made by one court is required to be enforced by another court, an office copy of the order so made, certified by the clerk or other proper officer of the court which made the same under the seal of such court, shall be produced to the proper officer of the court required to enforce the same. R. S., c. 129, s. 85.

Re Dome Lode Development Co. See supra.

Re Winding-up Act and Sov. Bank, 43 N. B. R. 519.

The correct practice in order to enforce an order or judgment of the court of another province made under the Winding-up Act, and produced to the Registrar pursuant to sec. 126, is to enter such order as a judgment of this court under the rules made under the Act by this Court in Trinity Term, 1888, without any formal motion to that effect.

127. Proceeding on Order of Another Court.—Such last mentioned court, shall, upon such production of the said certified copy of such order, take the same proceedings thereon for enforcing the order as if it was the order of the court required to enforce it. R. S., c. 129, s. 85.

Re Dome Lode Development Co. See supra.

128. Rules as to Amendments.—The rules of procedure, for the time being, as to amendments of pleadings and proceedings in the court, shall apply, as far as practicable, to all pleadings and proceedings under this Act:

2. Authority to Apply.—Any court before which such proceedings are being carried on shall have full power and authority to apply to such proceeding the appropriate rules of such court as to amendments. R. S., c. 129, s. 86.

129. Irregularity or Default.—No pleading or proceeding shall be void by reason of any irregularity or default which may be amended or disregarded; but the same may be dealt with according to the rules and practice of the court in cases of irregularity or default. R. S., c. 129, s. 87.

130. Powers Conferred by this Act are Supplementary.—

Any powers by this Act conferred on the court are in addition to, and not in restriction of any powers at law or in equity, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, or his estate, for the recovery of any call or other sum due from such contributory, debtor, estate, and such proceedings may be instituted accordingly. R. S., c. 129, s. 90.

131. Wishes of Creditors.—The court may, as to all matters relating to the winding up, have regard, so far as it deems just, to the wishes of the creditors, contributories, shareholders or members as proved to it by any sufficient evidence. R. S., c. 129, s. 19.

Re London Fence Ltd., 17 W. L. R. 387 (Man.).

Held, persons on the list of contributories have a status to intervene to ask the court for directions with respect to the liquidator.

Re London Fence Limited (No. 1), 21 Man. R. 91. Leave to appeal refused, 17 W. L. R. 650.

Under sec. 131, further proceedings on an issue ordered to be tried between the liquidator of a company being wound up under the Act and a person placed by him on the list of contributories, should be stayed when it is shewn that an overwhelming proportion of both the shareholders and creditors of the company and the liquidator himself desire that the claim against the contributory should be abandoned because of their belief that the proceeding would not be of benefit to them.

The order for such stay, however, should provide that a shareholder or person opposed to it may use the name of the liquidator or the company in bringing the issue to trial, on giving within a time limited a satisfactory indemnity to the liquidator against costs, in default of which only the issue to be dismissed.

131a. "Solicitors and Counsel Representing Classes of Creditors.—The court if satisfied that, with respect to the whole or any portion of the proceedings, the interests of creditors, claimants or shareholders can be classified, may, after notice by advertisement or otherwise, nominate and appoint a solicitor and counsel to represent each or any class for the purpose of the proceedings, and all the persons composing any such class shall be bound by the acts of the solicitor and counsel so appointed, and service upon such solicitor of notices, orders, or other proceedings of which service is required, shall for all purposes be, and be deemed to be, good and sufficient service thereof upon all the persons composing the class represented by him; and the court may, by the order appointing a solicitor and counsel for any class, or by subsequent order, provide for the payment of the costs of such solicitor and counsel by the liquidator of the company out of the assets of the company, or out of such portion thereof as to the court seems just and proper." (Added by 6-7 Edw. VII., c. 51, s. 1.)

132. Liquidator Subject to Summary Jurisdiction of Court.—The liquidator shall be subject to the summary jurisdiction of the court in the same manner and to the same extent as the ordinary officers of the court are subject to its jurisdiction and the performance of his duties may be compelled by order of the court. R. S., c. 129, s. 39.

Re London Fence Ltd., 17 W. L. R. 387 (Man.), see under sec. 131 above.

Carson vs. Montreal Trust Co., 49 N. S. R. 50; 23 D. L. R. 690.

Claims against liquidators may be enforced by a summary proceeding, and a plenary action against a liquidator for the wrongful taking possession of goods while in transit after the winding-up of the corporation will either be stayed or dismissed.

133. Remedies Obtained by Summary Order.—All remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, lien or right of property upon, in or to any effects or property in the hands, possession or custody of a liquidator, may be obtained by an order of the court on summary petition, and not by any action, suit, attachment, seizure or other proceeding of any kind whatsoever R. S., c. 129, s. 39.

The president of a company became responsible to a bank for advances made to it, and the company gave him as security a mortgage on certain lands. In the winding-up proceedings the mortgagee presented a petition asking for an order directing the conveyance to him by the liquidator of the company's equity of redemption—*Held*, that the court had jurisdiction to make the usual order for foreclosure or sale, and that it was a matter of discretion whether it would do so and sanction summary proceedings, by virtue of sec. 39, or whether it would direct an action to be taken. *Re The Essex Land & Timber Co. (Trout's Case)* (1891), 21 O. R. 367.

Re Tobique Gypsum Co., 6 O. L. R. 515.

Contributories, creditors, officers and trustees are the classes of persons over whom summary jurisdiction is given.

Re Raven Lake Portland Cement Co.; National Trust Co. vs. Trusts & Guarantee Co., 24 O. L. R. 286 (C. A.)

Section 133 of the Act is to be read in connection with sec.

22. Sec. 133 lays down the rule; sec. 22 gives the exception.

Claim by mortgagees to proceeds or for conversion.

Held, that sec. 133 was not applicable to the alternative claim for conversion; and *quære* whether it was applicable to the claim for the proceeds; but, even if the referee had jurisdiction to adjudicate upon the claims in the winding up, he had a discretion under sec. 22, to give leave to bring an action, and it could not be said that that discretion was improperly exercised.

RULES, REGULATIONS AND FORMS.

134. Judges may Make—Proviso.—A majority of the judges of the court of which the chief justice shall be one, may, from time to time make and frame and settle the forms, rules and regulations to be followed and observed in proceedings under this Act, and make rules as to the costs, fees and charges which shall or may be had, taken or paid in all such cases by or to attorneys, solicitors or counsel, and by or to officers of courts, whether for the officers or for the Crown, and by or to sheriffs, or other persons, or for any service performed or work done under this Act: Provided that in Ontario the judges of the Supreme Court of Ontario, and in Quebec, the judges of the Court of King's Bench, or a majority of such judges of which the chief justice shall be one, shall make and settle such forms, rules and regulations. R. S., c. 129, s. 92.

135. Until Rules are Made Procedure to Court to Apply.

—Until such forms, rules and regulations are made, the various forms and procedures, including the tariff of costs, fees and charges in cases under this Act, shall, unless otherwise specially provided, be the same, as nearly as may be, as those of the court in other cases. R. S., c. 129, s. 93.

Re Belding Lumber Co., 23 O. L. R. 255.

Re Con. Rule 524 made applicable by this section. See case cited under.

Re Baynes Carriage Co., 7 D. L. R. 257, 23 O. W. R. 10.

Upon an application by a corporation for a winding-up order, the directors are compellable witnesses for examination under sec. 135 of the Act supplemented by Con. Rules (Ont.), 489, 491, 492.

Re Baynes Carriage Co., 7 D. L. R. 257.

Upon an application to examine certain directors of a company, sec. 135, read with sec. 134 and sec. 2 (e.), render applicable, in Ontario, the procedure current in the High Court of Justice (Ont.).

UNCLAIMED DEPOSITS.

136. Unclaimed Dividends to Remain in Bank.—All dividends deposited in a bank and remaining unclaimed at the time of the final winding up of the business of the company shall be left for three years in the bank where they are deposited, subject to the claim of the person entitled thereto:

2. **And Paid to Minister after Three Years.**—If such dividends are unclaimed at the expiration of three years aforesaid they shall be paid over by such bank with interest accrued thereon, to the Minister duly claimed.

3. **If Afterwards Claimed.**—If such dividends are afterwards duly claimed, they shall, with such interest, be paid over to the persons entitled thereto. R. S., c. 129, s. 94.

137. Money Deposited not Paid after Three Years to be Paid to Minister of Finance.—The money deposited in the bank by the liquidator after the final winding up of the business of the company shall be left for three years in the bank, subject to be claimed by the persons entitled thereto and, if not then paid out to such persons, shall be then paid over, with the interest accrued thereon to the Minister and, if afterwards claimed, shall be paid with such interest to the persons entitled to the same. R. S., c. 129, s. 41.

OFFENCES AND PENALTIES.

138. Court May Direct Criminal Proceedings.—When a winding-up order is made, if it appears in the course of such winding up that any past or present director, manager, officer or member of the company is guilty of an offence in relation to the company for which he is criminally liable, the court may, on the

application of any person interested in such winding up, or of its own motion, direct the liquidator to institute and conduct a prosecution or prosecutions or such offence, and may order the costs and expenses to be paid out of the assets of the company. R. S., c. 129, s. 96.

139. Destruction of Books or False Entry Therein—Penalty.—Every person who with intent to defraud or deceive any person, destroys, mutilates, alters or falsifies any book, paper, writing or security, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or other document belonging to the company, the business of which is being wound up under this Act, is guilty of an indictable offence and liable to imprisonment in the penitentiary for any term not less than two years, or to imprisonment in any goal or in any place of confinement other than a penitentiary for any term not less than two years, with or without hard labor. R. S., c. 129, s. 95.

140. Failure to Comply with Order of Court a Contempt.—Any liquidator, director, manager, receiver, officer or employee of a company, failing to comply with the requirements or directions of any order made by the court under this Act, shall be guilty of contempt of court and shall be subject to all process and punishments of such court for contempt.

2. Removal of Liquidator from Office.—Any liquidator so failing may in the discretion of the court be removed from office as such liquidator. R. S., c. 129, ss. 38, 39, 40 and 83.

141. Refusal by Officers of Company to Give Information—Penalty.—Any refusal on the part of the president, directors, officers or employees of the company to give all information possessed by them respectively as to the affairs of the company required by the accountant or other person ordered by the court under this Part to inquire into the affairs of the company and to report thereon shall be a contempt of court and such president, directors, officers and employees shall be subject to all possessed by them respectively as to the affairs of the company. R. S., c. 129, s. 11.

Colonial Engineering Co. vs. Dom. Light, etc., Co., 13 Que. P. R. 436.

An application by a creditor for permission to examine the books of a company under liquidation will not be granted unless special reasons therefore are shewn.

142. Failure to Deposit in Bank Money of Estate—Penalty.—Every liquidator who shall not within three days after the date of the final winding up of the business of the company, deposit in the bank appointed or designated as hereinbefore provided, any money belonging to the estate of which he is such liquidator, then

in his hands and not required for any other purpose authorized by this Act, with an account of such money, and a sworn statement that the same is all that he has in his hands, shall incur a penalty not exceeding ten dollars and not less than ten per centum per annum interest upon the sums in his hands for every day after the expiration of the said three days on which he neglects or delays such payment. R. S., c. 129, s. 40.

143. Refusal of Witness to Answer or Subscribe a Contempt.—Every person being brought up for examination before the court after the court has made a winding-up order, or appearing before the court for such examination who refuses, without lawful excuse, to answer any question put to him or to subscribe any answer made by him on such examination, shall be guilty of contempt of court and shall be subject to all process and punishments of such court for contempt. R. S., c. 129, s. 82.

EVIDENCE.

144. Books to be "prima facie" Evidence of Contents.—If the business of a company is being wound up under this Act, all books of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded. R. S., c. 129, s. 53.

Re International Elec. Co. (McMahan's Case), 20 D. L. R., 451, 31 O. L. R. 348.

As between the contributories of a company in liquidation under the Winding-up Act, its books are *prima facie* evidence by section 144, but that section does not make them evidence in favour of the liquidator against an alleged contributory where the issue is substantially between a creditor of the company and persons proceeded against as shareholders.

145. Affidavit Before Whom Sworn.—Every affidavit, affirmation or declaration required to be sworn or made under the provisions or for the purposes of this Act, or to be used in the court in any proceeding under this Act, may be sworn or made in Canada before a liquidator, judge, notary public, commissioner for taking affidavits or justice of the peace; and out of Canada, before any judge of a court of record, any commissioner for taking affidavits to be used in any court in Canada, any notary public, the chief municipal officer of any town or city, any British consul or vice-consul, or any person authorized by or under any Statute of Canada, or of any Province, to make affidavits. R. S., c. 129, s. 88.

146. Judicial Notice of Seals, Stamp or Signature.—All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal, or stamp or signature, as the case may be of any such court, liquidator, judge, notary public, commissioner, justice, chief municipal officer, consul, vice-consul, or other person attached, appended or subscribed to any such

affidavit, affirmation or declaration, or to any other document to be used for the purposes of this Act. R. S., c. 129, s. 89.

147. Copy of Order Evidence of Order.—When any order made by one court is required to be enforced by another court, the production of an office copy of the order so made certified by the clerk or other proper officer of the court which made the same, under the seal of such court, shall be sufficient evidence of such order having been made. R. S., c. 129, s. 85.

148. Failure to Produce Pass-book, how Proved.—The absence of mention in the minutes of any meeting of contributors, creditors, shareholders or members under this Act, of the production of the liquidator's bank pass-book, shall be *prima facie* evidence that such pass-book was not produced at such meeting. R. S., c. 129, s. 37.

PART II.

BANKS.

149. Application of Part.—The provisions of this Part apply to banks only, not including savings banks. R. S., c. 129, s. 97.

150. Creditor for What Amount to Apply.—The application for a winding-up order shall be made by a creditor for a sum of not less than one thousand dollars. R. S., c. 129, s. 98.

151. Direction of Court for Meeting of Shareholders and Creditors.—The court shall, before making the order, direct a meeting of the shareholders of the bank and a meeting of the creditors of the bank to be summoned, held, and conducted as the court directs for the purpose of ascertaining their respective wishes as to the appointment of liquidators. R. S., c. 129, s. 98.

152. Chairman of Meetings of Shareholders.—The court may appoint a person to act as chairman of the meeting of shareholders, and, in default of such appointment, the president of the bank or other person who usually presides at a meeting of shareholders shall be chairman. R. S., c. 129, s. 99.

153. Chairman of Meeting of Creditors.—The court may also appoint a person to act as chairman of the meeting of creditors, and in default of such appointment, the creditors at the meeting shall appoint a chairman. R. S., c. 129, s. 99.

154. Voting as at a Bank Meeting.—In taking a vote at the meeting of shareholders, regard shall be had to the number of votes conferred by law or by the regulations of the bank on each shareholder present or represented at such meeting. R. S., c. 129, s. 100.

155. Voting Regulated by Debt.—In taking a vote at the meeting of creditors, regard shall be had to the amount of the debt due to each creditor. R. S., c. 129, s. 100.

156. Report to Court—Appointment of Liquidators.—The chairman of each meeting shall report the proceedings of the meeting to the court, and if a winding-up order is made, the court shall appoint one or more liquidators, not exceeding three, to be selected in its discretion, after such hearing of the parties as it deems expedient, from among the persons nominated by the majorities and minorities of the shareholders and creditors at such meetings respectively. R. S., c. 129, s. 101; 52 V., c. 32, s. 17.

157. Court Appoints.—If no one has been so nominated, the liquidator or liquidators shall be chosen by the court. 52 Vic., c. 32, s. 18.

Meetings having been held of the shareholders and of the creditors, as provided for by sections 98 and 99, the former recommended the appointment of C., G. and S. as liquidators, whilst the latter wished for that of G., C. and H. It appeared that it would be necessary to resort to the double liability of the shareholders (under sec. 70 R. S. C., c. 120) to satisfy the creditors—Held, that as the creditors had the chief and immediate concern in realizing the assets, their choice should be adopted. *Re The Central Bank of Canada* (1887), 15 O. R. 309. And see *In re Association of Land Financiers* (1878), L. R., 10 C. D. 269.

As a general rule it is desirable that the liquidators should be disinterested persons, and preference should therefore be given to one who is neither a shareholder nor a creditor. *Re The Central Bank of Canada* (1887), 15 O. R. 309. *In re The Northumberland, etc., Banking Co.* (1858), 2 DeG. and J. 508.

158. Reservation of Dividends for Outstanding Notes.—The liquidators shall ascertain as nearly as possible the amount of notes of the bank intended for circulation and actually outstanding, and shall reserve dividends on any part of the said amount in respect of which claims are not filed until the expiration of at least two years after the date of the winding-up order or until the last dividend, if such last dividend is not made until after the expiration of the said time.

2. Applied to Subsequently Filed Claims.—If claims are not filed and dividends applied for in respect of any part of the said amount before the period by this section limited, the dividends so reserved shall form the last or part of the last dividend. R. S., c. 129, s. 103.

159. Publication of Notices.—Publication in the *Canada Gazette* and in the official *Gazette* of each Province and in two newspapers issued at or nearest to the place where the head office of a bank is situate, of notice of any proceeding of which, under this Act, creditors should be notified, shall be sufficient notice to holders of bank notes in circulation;

2. In Quebec, Publication in English and French.—If the head office is situated in the Province of Quebec, one of the newspapers in which publication is to be made shall be a newspaper published in English and the other a newspaper published in French. R. S., c. 129, s. 104.

PART III.

LIFE INSURANCE COMPANIES.

160. Application of Part.—The provisions of this Part apply only to life insurance companies, and to insurance companies doing life and other insurance, in so far as relates to the life insurance business of such companies. R. S., c. 129, s. 105.

161. Company Without License Liable as for Insolvency.—Whenever a license of a company has expired or been withdrawn under the Insurance Act, and has not been renewed within thirty days after such expiry or withdrawal, the company shall be subject to the provisions of this Act applicable to the case of insolvency of such a company, except in case of,—

(a) **Exceptions.**—A company which previously to the twenty-eighth day of April, one thousand eight hundred and seventy-seven, was licensed to transact the business of life insurance in Canada and ceased to transact such business before the twenty-first day of March, one thousand eight hundred and seventy-eight having before that date given written notice to that effect to the Minister; or

(b) A company licensed under the Insurance Act to transact the business of life insurance in Canada which has in manner provided by the said Act, procured the transfer of its outstanding policies in Canada to some company or companies licensed under the said Act, or obtained the surrender of its policies as far as practicable. R. S., c. 129, s. 106.

162. Application of Deposits and Assets.—In case of the insolvency of any company, the deposits of such company held by the Minister and the assets held by the trustees under "*The Insurance Act*," shall be applied *pro rata* towards the discharge of all claims of policyholders in Canada duly authenticated against such company. R. S., c. 129, s. 107.

163. Claims of Policyholders in Canada.—Upon the insolvency of any company and the making of a winding-up order under this Act, the policyholders in Canada shall be entitled to claim for the full net values including bonus additions and profits accrued, of their several policies at the time of the winding-up order, less any amount previously advanced by the company on the security of the policy;

2. Rank with Judgments.—Such claims shall rank with

judgments obtained and claims matured on Canadian policies, in the distribution of the assets. R. S., c. 129, s. 108.

164. Valuation of Policies.—The liquidator may require the Superintendent of Insurance to value or procure to be valued under his supervision the policies of the policyholders in Canada on the basis prescribed in "The Insurance Act";

2. Expenses.—The expenses of such valuation, at a rate of three cents for each policy or bonus addition so valued shall be retained by the Minister from the securities held by him. 62-63 Vic., c. 43, s. 6.

165. Sale of Securities and Assets by order of the Court.—Upon the completion by the liquidator of the statement to be prepared by him of all judgments against the company upon policies in Canada, and of all claims upon policies matured or outstanding, the court shall cause the securities held by the Minister for such company, and the assets held by the trustees provided in "The Insurance Act," or any part of them it deems fit, to be sold or realized in such manner and after such notice and formalities as the court appoints. R. S., c. 129, s. 108.

166. Distribution of Proceeds.—The proceeds* so realized, after paying expenses incurred, shall, except in so far as they have been applied, under this Act, to effect a reinsurance of policies, be distributed *pro rata* amongst the claimants, according to such statement;

2. Recourse of Proceeds do not Cover Claims.—If the proceeds are not sufficient to cover in full all claims recorded in the statement, such policyholders shall not be barred from any recourse they have, either in law or equity, against the company issuing the policy or against any shareholder or director thereof, other than for a share in the distribution of the proceeds aforesaid or in respect to any distribution of the general property and assets of the company, other than the deposit and the assets vested in trustees. R. S., c. 129, s. 108.

Prior to 1872, the mode of valuing policies in winding up insolvent life insurance companies was to estimate the sum which would be required to purchase a policy for the same amount at the same premium in a solvent company. See, in *re English Assurance Co. (Holdich's Case)* (1872), L. R., 14 Eq. 72. But by sec. 5 of the Life Assurance Companies' Act (35 and 36 Vic., c. 41 Imp.), it was enacted that thereafter the value of such policies should be estimated in the manner provided for in the first schedule to that Act, *i.e.*, the value was to be the difference in the present value of the reversion in the sum assured on decease (including any bonus or addition made thereto before the commencement of winding-up proceedings), and the present value of the future annual premiums; while the rate of interest in calculating such present values was to be four per centum per annum, and the rate of mortality "that of the tables known as the seventeen offices' experience tables."

167. Claim on Cancellation of Policy or Contract.—Whenever the company or the liquidator, or the holder of the policy or contract of insurance exercises any right, which it or he has, to cancel any policy or contract, the holder shall be entitled to claim as a creditor for the sum which, under the terms of the policy or contract, is due to him upon such cancellation. R. S., c. 129, s. 109.

168. Statement of Creditors to be Prepared by the Liquidator.—Proviso: for Contestation.—The liquidator shall, without the filing of any claim, notice or evidence, or the taking of any action by any person, make a statement of all the persons appearing, by the books and records of the officers of the company, to be creditors or claimants on any matured, valued or cancelled policy or contract of insurance, and of the amount due to each such person in respect of such claims, and every such person shall be collocated and ranked as and shall be entitled to the right of a creditor or claimant for such amount, without filing any claim, notice or evidence, or taking any action: Provided that any such collocation may be contested by any person interested, and any person who is not collocated or who is dissatisfied with the amount for which he is collocated, may file his own claim. R. S., c. 129, s. 110.

169. Copy of Statement to be Filed.—A copy of such statement, certified by the liquidator, shall forthwith, after the making of such statement, be filed in the office of the superintendent of insurance at Ottawa;

2. Notice to be given by Publication.—Notice of such filing shall forthwith be given by the liquidator by notice in the *Canada Gazette* and in the official *Gazette* of each Province and in two newspapers issued at or nearest to the place where the head office in Canada of the company is situate;

3. Notice to be given by Mail.—The liquidator shall also, forthwith send by mail, prepaid, a notice of such filing to each creditor named in the statement, addressed to the addresses in Canada of such creditors, as far as the same are known, and in the case of foreign creditors, addressed to the addresses of their representatives or agents in Canada, as far as the same are known. R. S., c. 129, s. 110.

170. Claims Accruing after the Winding-Up Order but within Thirty Days thereof.—Claims Accruing after Thirty Days.—The holder of a policy or contract of life insurance, upon which a claim accrues after the date of the winding-up order and before the expiration of thirty days after the filing, in the office of the superintendent of insurance, of the statement referred to in the last preceding section, shall be entitled to claim as a creditor for the full net amount of such claim—less any amount previously advanced by the company on the security of the policy

or contract; and the said statement and the dividend sheet shall, if necessary, be amended accordingly:—Provided that no claim which accrues after the expiration of the thirty days aforesaid shall rank upon the estate unless nor until there is sufficient to pay all creditors in full. R. S., c. 129, s. 111.

171. Holder giving Notice of Willingness to Reinsure—Reinsurance must be part of General Scheme.—If, before the expiration of the thirty days hereinbefore mentioned, the holder of a policy or contract of life insurance, on which a claim has not accrued, signifies, in writing, to the liquidator, his willingness to accept an insurance in some other company for the amount which can be secured by the dividend on his claim to which such holder is or may become entitled, the liquidator may, with the sanction of the court, effect for such holder an insurance to the amount aforesaid in another company or companies, approved of by the superintendent of insurance, and may apply to that purpose the dividend on his claim to which such holder is or may become entitled: Provided that such insurance shall be effected only as part of a general scheme for the assumption, by some other company or companies, of the whole or part of the outstanding risk and liabilities of the insolvent company. R. S., c. 129, s. 112.

172. Report to the Superintendent of Insurance.—If the company is licensed under "*The Insurance Act*," the liquidator shall report to the superintendent of insurance once in every six months, or oftener as the superintendent requires, on the condition of the affairs of the company, with such particulars as the superintendent requires. R. S., c. 129, s. 113.

173. What is Sufficient Notice to Holders of Policies.—Publication in the *Canada Gazette* and in the official *Gazette* of each Province of Canada, and in two newspapers issued at or nearest to the place where the head office in Canada of an insurance company is situate, of notice of any proceeding of which, under this Act, creditors should be notified, shall be sufficient notice to holders of policies or contracts of insurance in respect of which no notice of claim has been received. R. S., c. 129, s. 114.

PART IV.

OTHER THAN LIFE INSURANCE COMPANIES.

174. Application of Part.—The provisions of this Part apply only to insurance companies other than life insurance companies and to insurance companies doing life and other insurance, in so far as relates to the insurance business of such companies which is not life insurance business. R. S., c. 129, s. 115.

175. When a Company shall be Deemed Insolvent.—Any company shall be deemed insolvent upon its failure to pay any

undisputed claim arising, or loss insured against, in Canada, upon any policy held in Canada, for the space of sixty days after becoming due, or, if disputed, after final judgment and tender of a legal valid discharge, and (in either case) after notice thereof to the Minister;

2. Time for Notice to the Minister.—In any case when a claim for loss is, by the terms of the policy, payable on proof of such loss, without any stipulated delay, the notice to the Minister under this section shall not be given until after the lapse of sixty days from the time when the claim becomes due. R. S., c. 129, s. 116.

176. Application of Deposit held by Minister.—Any deposit held by the Minister for policyholders shall be applied *pro rata* towards the payment of all claims duly authenticated against such company, upon or in respect of policies issued to policyholders in Canada. R. S., c. 129, s. 117.

177. Return Premium.—Holders of policies or contracts of insurance on which no claim has accrued at the time the winding-up order is made, shall be entitled to claim as creditors, for such part of the premium paid as is proportionate to the period of their policies or contracts respectively unexpired at the date of the winding-up order;

2. Ranks as Judgment.—Such return or unearned premium shall rank with judgments obtained and claims accrued, in the distribution of the assets. R. S., c. 129, s. 118.

178. Sale of Securities.—Upon the completion of the statement to be prepared by the liquidator under this Act, the court shall cause the securities held by the Minister for the company, or any part of them it deems fit, to be sold in such manner and after such notice and formalities as the court appoints.

2. Application of Proceeds.—The proceeds thereof, after paying expenses incurred, shall (except in so far as they have been applied under this Act to effect a re-insurance of the policies) be distributed *pro rata* among the claimants according to such statement;

3. Recourse in Case of Insufficiency of Proceeds.—If the proceeds are not sufficient to cover in full all claims recorded in the statement, such policyholders shall not be barred from any recourse they have either at law or in equity against the company issuing the policy, other than that for a share in the distribution of the proceeds of the securities held for such company by the Minister. R. S., c. 129, s. 118.

179. Claim when Policy Cancelled.—Whenever the company or the liquidator or the holder of the policy or contract of insurance, exercises any right which it or he has to cancel the policy

or contract, the holder shall be entitled to claim as a creditor for the sum which, under the terms of the policy or contract, is due to him upon such cancellation. R. S., c. 129, s. 118.

180. Statement to be Made by Liquidators.—The liquidator shall, without the filing of any claim, notice or evidence, or the taking of any action by any person, make a statement of all the persons appearing, by the books and records of the officers of the company, to be creditors or claimants under the three last preceding sections and of the amounts due to each such person thereunder. R. S., c. 129, s. 119.

181. Collocation and Rank—Contestation.—Every such person shall be collocated and ranked as and shall be entitled to the rights of a creditor or claimant for such amount, without filing any claim, notice or evidence or taking any action: Provided that any such collocation may be contested by any person interested, and any person not collocated or dissatisfied with the amount for which he is collocated, may file his own claim. R. S., c. 129, s. 119.

182. Copy to be Filed—Notice of Publication.—A copy of such statement, certified by the liquidator, shall forthwith, after the making of such statement, be filed in the office of the superintendent of insurance at Ottawa, and notice of such filing shall be forthwith given by the liquidator by notice in the *Canada Gazette*, and in the official *Gazette* of each Province and in two newspapers published at or nearest the place where the head office in Canada of the company is situate. R. S., c. 129, s. 119.

183. Notice by Mail.—The liquidator shall also forthwith send by mail, prepaid, a notice of such filing to each creditor named in the statement, addressed to the addresses in Canada of such creditors, as far as the same are known—and in the case of foreign creditors, addressed to the addresses of their representatives or agents in Canada, as far as the same are known. R. S., c. 129, s. 119.

184. If a Claim Accrues after the Winding-Up Order, but within Thirty Days of Filing of Statement—Claims Accruing after Thirty Days.—The holder of a policy or contract of insurance upon which a claim accrues after the date of the winding-up order, and before the expiration of thirty days after the filing in the office of the superintendent of insurance, of the statement aforesaid, shall be entitled to claim, as a creditor, for the full net amount of such claim; and the said statement and the dividend sheet shall, if necessary, be amended accordingly; Provided that no claim which accrues after the expiration of the thirty days hereinbefore mentioned shall rank upon the estate, unless nor until there is sufficient to pay all creditors in full. R. S., c. 129, s. 120.

185. Re-Insurance.—Before the expiration of the thirty days aforesaid, the liquidator may, with the sanction of the court, arrange with any incorporated insurance company, approved of for such purpose by the superintendent of insurance, for the reinsurance by such company of the outstanding risks of the insolvent company, and for the assumption by such company of the whole or any part of the other liabilities of the insolvent company. R. S., c. 129, s. 121.

186. Payment of Premium.—In case of such arrangement the liquidator may pay or transfer to such company such of the assets of the insolvent company as may be agreed on as the consideration for such reinsurance or assumption, and in such case the arrangement for reinsurance shall be in lieu of the claim for unearned premium;

2. Application of Surplus.—Any remaining assets of the insolvent company shall be retained by the liquidator as a security to the creditors for the payment of their claims, and shall, if necessary, be so applied, and shall not be returned to the company, except on the order of the court after the satisfaction of such claims. R. S., c. 129, s. 121.

187. Report to Superintendent of Insurance.—If the company is licensed under "*The Insurance Act*," the liquidator shall report to the superintendent of insurance once in every six months, or oftener, as the superintendent requires, on the condition of the affairs of the company, with such further particulars as the superintendent requires. R. S., c. 129, s. 122.

188. What Publication of Notice Sufficient.—Publication in the *Canada Gazette*, and in the official *Gazette* of each Province, and in two newspapers published at or nearest the place where the head office of an insurance company is situate, of notice of any proceeding of which, under this Act, creditors are to be notified, shall be sufficient notice to holders of policies or contracts of insurance, in respect of which no notice of claim has been received. R. S., c. 129, s. 123.

**BILLS OF EXCHANGE
CHEQUES AND PROMISSORY
NOTES**

ANNOTATED

BILLS OF EXCHANGE ACT.

The Bills of Exchange Act is a codifying Act, and the rule for its construction was thus stated by Lord Herschell in the case of *Bank of England vs. Vagliano* (1891), A. C. at p. 144:

"I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.

"If a statute, intended to embody in a code a particular branch of law, is to be treated in this fashion, it appears to me its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute, critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code. I give these as examples merely; they, of course, do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to early decisions can only be justified on some special ground.

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(Adapted from Chalmers.)

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ESTABLISHED 1864

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THE REVISED STATUTES OF CANADA, 1906

CHAPTER 119.

AN ACT RELATING TO BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES

SHORT TITLE.

1. Short Title.—This Act may be cited as the Bills of Exchange Act. 53 V., c. 33, s. 1. Eng. s. 1.

This Act is a consolidation of the Bills of Exchange Act, 1890, and amending Acts. The Canadian Act is based on, but differs in some respects from the English Bills of Exchange Act, 1881, which was drafted by Chalmers. For historical introduction, see also Falconbridge on Banking and Bills of Exchange; chaps. 30 and 31.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “acceptance” means an acceptance completed by delivery or notification:

(b) “action” includes counter-claim and set-off;

Case vs. Fiegehen, 19 O.W.R. 718.

Notes given in payment of threshing machine. Counter claim for damages.

Howell vs. Ironside, 19 O. W. R. 633.

Sale of livery business. Damages in deceit. Damages fixed. Conclusiveness.

(c) “bank” means an incorporated bank or savings bank carrying on business in Canada;

(d) “bearer” means the person in possession of a bill or note which is payable to bearer;

(e) “bill” means bill of exchange, and “note” means promissory note;

(f) “delivery” means transfer of possession, actual or constructive, from one person to another;

(g) “holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof;

(h) “endorsement” means an endorsement completed by delivery.

(i) "issue" means the first delivery of a bill or note complete in form, to a person who takes it as a holder;

(j) "value" means valuable consideration;

(k) "defence" includes counter-claim;

(l) "non-business days" means days directed by this Act to be observed as legal holidays or non-judicial days.

2. Any day other than as aforesaid is a business day. 53 V., c. 33, ss. 2 and 91. Eng. ss. 2 and 92.

(a) ACCEPTANCE.—As to the operative definition and requisites of an acceptance, see secs. 35 *et seq.*

As to delivery or notification to complete a contract on a bill, see sec. 39, 40 and 41. Delivery is defined by clause (f).

(b) ACTION.—The word "action" is used in secs. 11, 49, 58, 93, 157 and 183. By clause (k) defence includes counter-claim.

Set off is of a different nature from counter-claim. A set off consists of a defence to the original claim of the plaintiff. A counter-claim is an assertion of a separate and independent demand which does not answer or destroy the original claim of the plaintiff.

(c) BANK.—Banking in Canada is carried on by the chartered banks, certain savings banks, and private bankers. A bank under the Act does not include a private banker. Savings banks are governed by R. S. C., cc. 30 and 32.

(d) BEARER.—As to when a bill or note is payable to bearer, see sec. 21. A bill payable to bearer is negotiated by delivery (sec. 60). The possessor of a bill or note payable to order is not technically the "bearer" of it, but "bearer" is included in "holder" as defined by clause (g).

(e) BILL AND NOTE.—The operative definitions of these words are contained in secs. 17 and 176. A cheque is defined by sec. 165.

(f) DELIVERY.—Delivery is necessary to make any contract on a bill complete and irrevocable (sec. 39.) A person is said to have constructive possession of a thing when it is in the actual possession of his servant or agent on his behalf; therefore delivery may be effected without change of actual possession in three cases, namely: (1) A bill is held by C, on his own account; he subsequently holds it as agent for D; (2) A bill is held by C's agent, who subsequently attorns to D, and holds it as his agent; (3) A bill is held by D, as agent for C; he subsequently holds it on his own account. Chalmers, p. 4.

(g) HOLDER.—Holder as here defined includes classes of persons who are holders in different senses:—

(1) The lawful holder or holder in due course (sec. 56). In this sense holder includes a person to whom a bill is by its terms payable and whose title is good against all the world; and also a person to whom a bill is by its terms payable, and who, as against third parties, is entitled to enforce payment thereof, though, as between himself and his transferrer, he is a mere agent or bailee with a defeasible title, e.g., an endorsee for collection.

(2) An unlawful holder, that is, a person to whom a bill is by its terms payable, whose possession is unlawful (e.g., the finder of a bill endorsed in blank), but who nevertheless can give a valid

discharge to a person paying it in good faith, and also a good title to a person who takes it before maturity in good faith and for value (sec. 74). An unlawful holder must be distinguished from a mere wrongful possessor, e.g., a person holding under a forged endorsement, or a person who has stolen a bill payable to the order of another (sec. 49). A wrongful possessor has no title and gives none. Chalmers, p. 5.

Possession is an essential part of the definition. As to holder for value, see sec. 54. Bearer is defined by clause (d).

(h) ENDORSEMENT.—As to delivery, see clause (f).

As to the other requisites of an endorsement to operate as a negotiation, see secs. 62, et seq.

The word endorser primarily denotes the holder of a bill who endorses it, but it is also used to denote any person who signs a bill otherwise than as drawer or acceptor and thereby incurs the liabilities of an endorser to a holder in due course (sec. 131). A person who signs a bill although not the holder of it is called under the foreign codes the giver of an "aval."

The term endorsee is used to denote not only the person to whom a bill is specially endorsed, but also any person who makes title through an endorsement, e.g., the bearer of a bill endorsed in blank. Chalmers, p. 6. Cf. also notes to clause (g) *supra*, as to a holder for collection.

(i) ISSUE.—The term issue is used in secs. 28, 30 and 160. The "re-issue" of a bill is provided for by sec. 73. As to a "complete" bill: cf. secs. 31 and 56.

(j) VALUE.—The operative definition of valuable consideration is contained in section 53. See also secs. 54 to 58.

(k) DEFENCE.—The word is used in secs. 15 and 74. Cf. clause (b), *supra*.

(l) NON-BUSINESS-DAYS.—Sec. 43 provides that in all matters relating to bills, certain days and no others shall be observed as legal holidays or non-judicial days.

See secs. 6, 42, and notes to sec. 43.

PART I.

GENERAL.

3. Things Done in Good Faith.—A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly whether it is done negligently or not. 53 V., c. 33, s. 89. Eng. s. 90.

The expression "in good faith" is used in secs. 56, 139, 172 and 175.

Negligence or carelessness on the part of the holder of a bill is not of itself sufficient to deprive him of his remedies for procuring its payment (*Jones vs. Gordon* 1877), 2 App. Cas., H. L. 629; but negligence or carelessness when considered in connection with the surrounding circumstances may be evidence of bad faith: *Re Gomersal* (1875), 1 Ch. D. 146. Every case must be determined on its own merits. Cf. *Tatum v. Haslar*, 1889, 23 Q. B. D., at p. 348.

In *Alloway vs. Hrabí*, 14 Man. R. 627, the evidence did not clearly show that the promissory notes sued on had been signed

by the defendants, and it was proved that, if they had signed them, they did so without knowing that they were promissory notes and in the belief, induced by the false representations of the agent of the payee, that the documents they signed were petitions to the Government for a road:—*Held*, following *Foster vs. McKinnon* (1869), L. R. 4 C. P. 704, and *Lewis vs. Clay* (1897), 77 L. T., 653, that, notwithstanding the language of secs. 56 and 74 (b) of the Bills of Exchange Act, 1890, the defendants were not liable to the plaintiffs, although they were holders in good faith, for value and without notice of any defect or fraud and had acquired the notes during their currency.

Lockhart vs. Wilson, 39 Can. S. C. R. 541.

L. and others signed promissory notes each for the amount of ten shares in a company formed to manufacture rotary engines under an invention of the payee, who fraudulently misrepresented to them the prospects and intentions of such company. At the same time each maker signed an application for ten shares. The payee and T., the assignee of his patent of invention, induced W. to discount these notes and received a portion of the proceeds, part being retained by W. in payment of debts due him from these two parties. On the trial of actions by W. on the notes the evidence of T., who had absconded, was taken under commission, and he swore that the form of application signed by the respective defendants had been shown to W. before the notes were discounted. W. denied this and swore that he had been told that the notes were given in payment of stock held by the payee:—*Held*, that the evidence of W., on whom the onus of proof rested, could not be accepted; that the whole testimony and attendant circumstances shewed that W. suspected that the proceeds of the notes belonged to the company; and, having discounted them without inquiry as to the right of the payee and T. to receive these proceeds, he was not in good faith and could not recover.

4. Signature.—Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority: 53 V., c. 33, s. 90. Eng. s. 91.

Sec. 131 provides that no person is liable as drawer, endorser, or acceptor of a bill who has not signed it as such. Cf. secs. 17, 36, 62, 63, 132, 151 and 176.

BY OR UNDER HIS AUTHORITY.—Subject to the provisions of the Act, a forged or unauthorized signature is wholly inoperative, unless the party against whom it is sought to retain or enforce payment is precluded from setting up the forgery or want of authority (sec. 49). An unauthorized signature may become binding by ratification (see notes to sec. 49).

A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signatures only if the agent in so signing was acting within the actual limits of his authority (sec. 51).

A signature by an agent must be the principal's signature, or the agent's signature for or on his behalf; if the agent merely adds words to his own signature describing himself as agent, he will be liable, and not the principal. Cf. sec. 52.

5. What Required of Corporation.—In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal. 53 V., c. 33, s. 90. Eng. s. 91.

By the law merchant an instrument under seal is not negotiable, but this section makes an exception in the case of bills and notes sealed with the corporate seal of a company.

The section deals only with the form of signature. It does not touch the question of capacity to contract; see secs. 47 and 48. Cf. R. S. C., c. 79, secs. 32, 115 and 160.

Similar provisions are also contained in several of the provincial Companies' Act. In every case of a bill or note signed by or on behalf of a company, it is necessary to consult the statute which is applicable in the particular instance.

In the case of a bank, see secs. 73 and 74 of the Bank Act, *supra*.

6. Computation of Time.—Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. 53 V., c. 33, s. 91. Eng. s. 92.

Non-business days, as defined by sec. 2 (1) are the days directed by the Act to be observed as legal holidays or non-judicial days. What days are to be so observed is defined by sec. 43.

This section will be applicable to sec. 80 (acceptance), and sec. 94 presentment to acceptor for honour. Cf. also secs. 97 and 103 (notice of dishonour).

7. Crossing Dividend Warrants.—The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend. 53 V., c. 33, s. 94. Eng. s. 95.

8. The Bank Act not Affected.—Nothing in this Act shall affect the provisions of the Bank Act. 53 V., c. 33, s. 95. Eng. s. 97.

See Bank Act, especially secs. 61 to 75, *supra*.

9. Imperial Acts, 15 Geo. III., c. 51, and 17 Geo. III., c. 30.—The Act of Parliament of Great Britain passed in the fifteenth year of the reign of His Majesty George III., intituled "*An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, and the Act of the said Parliament passed in the seventeenth year of His Majesty's reign, intituled "*An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*", shall not extend to or be in force in any

province of Canada, nor shall the said Acts make void any bills, notes, drafts or orders made or uttered therein. 53 V., c. 33, s. 95."

The Act of 1890 repealed certain Dominion and provincial statutes then in force, but contained no provision, other than this section, expressly affecting any Imperial Statute. The statutes mentioned in this section are no longer in force in England.

10. Common Law of England.—The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall apply to bills of exchange, promissory notes and cheques. 54-55 V., c. 17, s. 8. Eng. s. 97.

Sec. 10 has been added to meet cases not exhaustively dealt with by other sections.

The Act governs the form, issue, negotiation and discharge of bills, the manner in which persons become liable as parties thereto, etc. Sec. 10 has been added to meet cases not exhaustively dealt with by other sections. But matters of civil obligation resulting from the substance of the contracts entered into by parties to bills and the consequences of such contracts are as a rule governed, not by the common law of England or the law merchant, but by the appropriate provincial law. *See Guy vs. Pare*, 1892, Q. R., 1 S. C. 443; *Noble vs. Forgrave*, 1899, Q. R., 17 S. C. 234; *Cook vs. Dodds*, 1903, 6 O. L. R. 608; *Falconbridge on Banking and Bills of Exchange*, pp. 357 *et seq.*; 28 C. L. T. and R. 812 *et seq.* The question of capacity is expressly referred by the Act to the appropriate law governing capacity to contract. See sec. 47.

11. Protest "Prima Facie" Evidence.—A protest of any bill or note within Canada and any copy thereof as copied by the notary or justice of the peace, shall, in any action be *prima facie* evidence of presentation and dishonour, and also of service of notice of such presentation and dishonour as stated in such protest or copy. 53 V., c. 33, s. 92.

12. Copy of Protest "Prima Facie" Evidence.—If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment, a notarial copy of the protest and of the notice of dishonour, and a notarial certificate of the service of such notice, shall be received in all courts as *prima facie* evidence of such protest, notice and service. 53 V., c. 33, s. 71.

13. Officer of the Bank not to Act as Notary.—No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any of the branches of the bank in which he is employed. 53 V., c. 33, s. 61.

14. Consideration, Purchase Money of Patent.—Every bill or note the consideration of which consists, in whole or in part of the purchase money of a patent right, or of a partial interests,

limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same issued, the words *Given for a patent right*.

2. Without such words thereon, such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration. 53 V., c. 33, s. 30.

15. Transferee to take with Equities.—The endorsee or other transferee of any such instrument having the words aforesaid so printed or written thereon shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties. 53 V., c. 33, s. 30.

By sec. 2, clause (b) set off is included in action, and by clause (k) defence includes counter-claim.

16. Transferring Defective Note—Indictable Offence—Penalty.—Every one who issues, sells or transfers, by endorsement or delivery, any such instrument not having the words *given for a patent right* printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, is a patent right, is guilty of an indictable offence, and liable to imprisonment for any term not exceeding one year, or to such fine not exceeding two hundred dollars, as the court thinks fit. 53 V., c. 33, s. 30.

PART II.

BILLS OF EXCHANGE.

By sec. 165, except as otherwise provided in Part III., the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque. Part III. contains special provisions with regard to a cheque which is not presented for payment within a reasonable time, and the termination of a bank's duty and authority to pay a cheque, and also with regard to crossed cheques.

By sec. 186, subject to the provisions of Part IV., and except as provided by sec. 186, the provisions of the Act relating to bills of exchange apply, with the necessary modifications, to promissory notes. In the application of such provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order. The following provisions as to bills do not apply to notes, namely: those relating to (a) presentment for acceptance; (b) acceptance; (c) acceptance *supra* protest; (d) bills in a set.

Form of Bill and Interpretation.

17. Bill of Exchange Defined.—A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a special person, or to bearer.

2. Non-compliance with Requisites.—An instrument which does not comply with the requisites aforesaid, or which orders any act to be done in addition to the payment of money, is not, except as hereinafter provided, a bill of exchange.

3. Unconditional Order.—An order to pay out of a particular fund is not unconditional within the meaning of this section: Provided that an unqualified order to pay, coupled with,—

(a) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or,

(b) a statement of the transaction which gives rise to the bill; is unconditional. 53 V., c. 33, s. 3. Eng. s. 3.

BILL OF EXCHANGE.—A bill is sometimes called a draft, and an accepted bill an acceptance. The person who gives the order is called the drawer. The person to whom it is addressed is called the drawee, and if he signifies his assent to the order (sec. 35), he is then called the acceptor. The person to whom the money is payable is called the payee or bearer (sec. 2), as the case may be. If he transfers the bill by indorsement (sec. 2), he is called the endorser (sec. 131); if by delivery only, he is called the transferor by delivery (sec. 137). The holder is defined by sec. 2.

Permissive.—A Bill of Exchange may be written in pencil, *Geary vs. Physic*, 5 B. and C. 238 (1826), and drawn in any language, *re Marseilles Co.*, 30 Ch. D. 598 (1885). No special form of words is essential, *Ellison vs. Collingridge*, 9 C. B. 570 (1850) provided the foregoing statutory definition is complied with. Where an instrument is so ambiguously worded that it is doubtful whether it was intended for a bill or note, the holder may treat it at his option as either; *Edis vs. Bury*, 6 B. and C. 433 (1827). Also in the cases mentioned in section 26.

Essential.—(1) A bill is an “order.” *Its terms must be imperative, not precative*, but the insertion of mere words of courtesy will not make it precative. Thus, an instrument running “Mr. B. will much oblige Mr. A. by paying to the order of C., etc.,” was held good as a bill: *Ruff vs. Webb*, 1 Esp. 129 (1794), but an instrument running “Please let bearer have £100 and you will much oblige me,” was held not to be a bill: “*Little vs. Slackford*, 1 M. and M. 171 (1828).”

(2) *The requisites of a Bill must appear on its face with reasonable certainty*;—Concerning the certainty required as to the drawee, see section 20; as to the payee, see section 21; as to the sum payable, see section 28 and as to the time when payable, see sections 23 and 24.

(3) *The Bill must be payable in money alone*, but it may be the money of any country: *Third National Bank vs. Cosby*, 41 U. C. Q. B. 408 (1877). *It must not order anything to be done in addition to the payment of money.* (Story, section 87), therefore an order requiring payment of a certain sum "and to take up a note for the drawer" was held to be invalid as a bill. *Irvine vs. Lowry*, 14 Peters (U. S.), 293 (1840). Money in Canada would be specie or Dominion Notes, see R. S. C., c. 30. But a bill may be payable in foreign money.

(4) *The order to pay must be unconditional*.—A bill drawn payable in the common form "as per advice" is unconditional (Story, section 152), but a bill payable so many days "after the arrival" of a certain ship is conditional and invalid, for the ship may never arrive: *Palmer vs. Pratt*, 2 Bing. 185 (1824). As to the instruments payable on a contingency, see sections 24 and 176.

An order to pay "on the sale or produce when sold of the X Hotel" was declared invalid, *Hill vs. Halford*, 2 B. and P. 413, Ex. Ch. (1801), as was also a cheque made conditional upon the obtaining of a certain contract: *Hakly vs. Elliott*, 96 L. R. 185; but an order to pay a sum mentioned "which you will please charge to my account and credit according to a registered letter I have addressed to you" was held to be valid under the above sub-section: *Re Boyse*, 33 Ch. D. 612 (1886).

Although a bill may not be *drawn* conditionally, it may be accepted conditionally (section 38), endorsed conditionally (section 66), or as between immediate parties, or as regards a remote party other than a holder in due course delivered conditionally (section 40).

(5) *The bill must be signed by the person giving it*. — The drawer may sign a blank paper, which may be subsequently filled up, section 31, or it may be accepted first and signed by the drawer afterwards, section 37; but even if accepted it is not a bill if it lack the drawer's signature: *Reg vs. Harper*, 7 Q. B. D. 78 (1881). The drawer may sign on any part of the bill so long as he signs as drawer (*Byles*, p. 97). It has been held in France that, where a bill payable to drawer's order was endorsed by him, though he omitted to sign it on the face, this was sufficient (*Nougier*, section 199). The drawer may sign in pencil, or with a cross or mark; *Coupal vs. Coupal*, 5 R. L. 465 (1873). Initials, a trade or assumed name, a stamp or a printed or engraved signature, are valid, where it is clear that the parties intended to adopt them as their signatures: *Exparte Birmingham Banking Co.*, L. R. 3 Ch. 653 (1868). In the case of a Corporation the signature of any authorized agent, officer or servant would bind them, or the seal alone would be sufficient. The signature of a party need not be written with his own hand. It is sufficient if it be by some other person by or under his authority, see section 4.

THE PERSON TO WHOM IT IS ADDRESSED.—The drawee must be named or otherwise indicated in a bill with reasonable certainty (sec. 30). A bill may be addressed to two or more drawees but not to two drawees in the alternative or to two or more drawees in succession (sec. 18).

ON DEMAND OR AT A FIXED OR DETERMINABLE FUTURE TIME.—As to when a bill is payable on demand, see sec. 23.

As to when a bill is payable at a determinable future time, see sec. 24. A bill must not be expressed to be payable on a contingency (sec. 18).

A SUM CERTAIN.—As to the meaning of a sum certain, see also sec. 28 (sum required to be paid with interest, by instalments, or according to an indicated or ascertainable rate of exchange).

SUM CERTAIN.—Instruments such as the following would be invalid as bills or notes, as not being for sums certain within the meaning of sec. 17, namely:—An order to pay C. "\$100 and all other sums which may be due to him." *Smith vs. Nightingale* (1818), 2 Stark 375; or an order to pay C. "the proceeds of a shipment of goods, value \$2,000, consigned by me to you." *Jones vs. Simpson* (1823) 2 B. & C. 318; or an order to pay C. "the balance due to me for building the Baptist College Chapel." *Crowfoot vs. Gurney* (1832), 9 Bing. 372.

SPECIFIED PERSON OR BEARER.—Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty; see sec. 21 and notes. See also sec. 19. As to bearer, see sec. 2 (d) and sec. 21.

EXCEPT AS HEREINAFTER PROVIDED.—These words were added to the Act in view of the provisions of sec. 28, sub-sec. 1, clause (d), but seem to be unnecessary for this purpose inasmuch as a sum payable as therein provided is still a "sum certain" within sec. 17.

The definition of a bill contemplates three parties to the instrument. Any two of them may, however, be the same person (secs. 19 and 26). The drawee or payee may be fictitious (secs. 21 and 26). Words may be added prohibiting transfer (sec. 21). No time for payment need be expressed (sec. 23). Blanks in material particulars may be filled up (sec. 1) including the date (sec. 31).

PARTICULAR FUND.—An order to pay out of a particular fund is not a bill of exchange, but may be an equitable assignment: see notes to sec. 127.

Imperial Bank vs. Georges (1909) Beck J., 2 Alta. 386.

Georges bought a stallion from Kidd, which was on the evidence held to have been sold as a thoroughbred Percheron, registerable in Alberta. In settlement of the purchase price of \$1,500, three notes for \$750, \$500 and \$250 respectively, were given. These notes reserved the property in the horse in the vendor, and were, in the ordinary form, known as lien notes. The \$500 note contained a provision that in the event of the vendor not producing documentary evidence of pedigree sufficient to obtain the registration of the horse in Alberta as a pure bred Percheron before the 31st December, 1907, the note should be returned. The horse in fact could not be registered as such, and the note was in fact returned. The purchaser returned the horse and did not at any time offer to return it.

The \$750 note was negotiated to the Imperial Bank of Canada, and the \$250 note to the Merchants Bank of Canada. The Imperial Bank brought an action on the \$750 note against Georges, the maker of the note. Georges brought an action against Kidd for damages for misrepresentation.

In the action by the Imperial Bank, the bank proved the assignment of the note in the following form: "For value received I assign and transfer the within note and contract and guarantee endorsed thereon, to the Imperial Bank of Canada, and waive presentation, notice of non-payment and protest, and guarantee the payment of the debt represented thereby." This was endorsed on the note and signed by Kidd. The only notice of the assignment was a letter written to Georges by the bank's solicitor, which read as follows: "Your promissory note in favour of W. C. Kidd, for \$750

and interest, has been forwarded to me for collection on account of the Imperial Bank of Canada. The amount due appears in the memo. below, which kindly let me have at once and save further expense. In case you refuse payment you might let me have the name of your solicitor whom you will authorize to accept service of a writ when same is issued."

Held, the notes were not negotiable promissory notes and therefore could not be transferred by endorsement and delivery, and the assignee thereof accepted the same subject to all equities.

Held, further, that the endorsement on the note above quoted was a sufficient assignment, and notwithstanding it appeared that it was held by the bank as collateral security, it was an absolute assignment on its face.

Held, further, that the letter from the bank's solicitor to the maker of the note was a sufficient notice of the assignment, and the assignee could, therefore, maintain the action without joining the assignor as a party plaintiff.

First National Bank v. Matson, 2 Alta. 249.

See section 61.

Thompson vs. Big Cities Realty & Agency Co., 21 O. L. R. 394.

To an action upon four promissory notes made by the defendants, an incorporated company, the defence was that the defendants had received no money by way of loan; that the notes were not binding: that they were made without consideration: that the plaintiff and one D. had agreed to deal together in real estate, and that any money advanced by the plaintiff had been advanced to D., that the notes had been procured by the plaintiff from the defendants by conspiracy with D., under the representation that the defendants owed the plaintiff; that the plaintiff and D. and D.'s wife, having agreed to purchase and deal in real estate, used the pretended loan and other moneys and assets of the defendants for such purposes; and the defendants counterclaimed against the plaintiff and D. and his wife, as defendants by counterclaim, for an account of all moneys wrongfully used by them, for a refund, and for further and other relief:—

Held, that the counterclaim was properly pleaded, and should not have been struck out at the trial, either under Con. Rule 261 or 254; it was not made to appear that the claim and counterclaim could not conveniently be tried together.

Held, also, that, even if an order striking out the counterclaim could be supported, it would be proper to stay the execution of the judgment obtained at the trial against the defendants, should be investigated; and that relief should be given to the defendants upon appeal from the order striking out the counterclaim, the judgment at the trial in favour of the plaintiff upon his claim being affirmed; and that judgment to stand for the protection *quantum valeat* of the plaintiff.

Auerbach vs. Hamilton (1909), 19 O. L. R. 570 followed.

The notes were signed with the name of the defendant company, the words "Company" and "Limited," which were both part of the name, being abbreviated to "Co." and "Ltd.":—

Held, that the notes were signed in the name of the company.

Held, also, that the plaintiff, having received the notes in good faith, and having nothing to do with the management of the company, was not affected by the alleged absence of proof that the persons who appeared to have affixed the name of the company to the notes were those having power to do so.

Held, also, upon the evidence, that the company were liable upon the notes.

Thien vs. Bank of B. N. A. 4 D. L. R. 388, 21 W. L. R. 192.

The fact that the assignment of property covered by a lien note transferred to a bank, as security for money borrowed from the bank by the payee thereof, was invalid, would be no bar to the right of the bank to recover on the note itself. See cases cited.

18. Instrument Payable on Contingency.—An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

2. Addressed to two or more Drawees.—A bill may be addressed to two or more drawees, whether they are partners or not, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange. 53 V., c. 23, ss. 6 and 11. Eng. ss. 6 and 11.

PAYABLE ON A CONTINGENCY.—A bill may be payable on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain; see sec. 24.

TWO OR MORE DRAWEES.—The acceptance of some one or more of the drawees, but not of all, is a qualified acceptance (sec. 28).

A bill may not be addressed to two drawees in succession, or in the alternative, but it may name a drawee in case of need (sec. 22). A bill may be made payable in the alternative (sec. 19).

The acceptors of a bill can be liable only jointly, whereas the makers of a note may be liable jointly or jointly and severally according to its tenor (sec. 179).

Ross vs. Reid, 42 N. S. R. 232.

Plaintiff purchased from C. a member of the firm of R. & C., a quantity of hay, and gave in payment therefor his promissory note, which C. undertook should not be used until the hay was delivered. The hay was never delivered, and C., in violation of his agreement, indorsed plaintiff's note to T. for value. An action brought by T. against plaintiff to recover the amount of the note was defended by plaintiff at the instance of R., who practically joined in the defence and acted as though the cause were his own:

Held, affirming the judgment of the trial judge—that plaintiff was entitled to recover against R. not only the amount of the note for which judgment was recovered against him, but the amount of the costs taxed as well.

19. Payer, Drawer or Drawee.—A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

2. Two or more Payees.—A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some several payees.

3. Holder of Office, Payee.—A bill may be made payable to the holder of an office for the time being. 53 V., c. 23, ss. 5 and 7. Eng. ss. 5 and 7.

PAYABLE TO OR TO THE ORDER OF.—Cf. secs. 21 and 22.

A bill payable to “order,” which is indorsed by the drawer, is deemed to be payable to drawer's order; *Chamberlain vs. Young* (1893), 2 Q. B. 206, C. A. A bill payable to the drawer's order may be treated either as a bill or note; *Golding vs. Waterhouse*, 16 N.B. (3 Pugs.) 313 (1876). A bill payable to the order of the drawee cannot be enforced until the acceptor has indorsed it and delivered it to some other person; *Witte vs. Williams*, 8 S. Car. 290 (1876).

When a bill is made payable in the alternative to one or two payees, it passes by the indorsement of either; *Spaulding vs. Evans*, 2 McLean, 139 (1840).

THE PAYEE.—The provisions of the Act relating to a payee apply, with the necessary modifications, to an endorsee under at special endorsement (sec. 67).

PAYABLE TO TWO OR MORE PAYEES, ETC.—The Act makes a material alteration in the law in allowing a bill to be made payable to persons in the alternative, unless there is apparent community of interest.

20. Drawee to be Named.—The drawee must be named or otherwise indicated in a bill with reasonable certainty. 53 V., c. 33, s. 6. Eng. s. 6.

As to a fictitious drawee, see sec. 26.

As to filling up blanks, see sec. 31.

ILLUSTRATIONS.—(1) Instrument in the form of a bill, but addressed to no one. B. writes an acceptance thereon. This is not a bill, and B. is not liable as an acceptor. *Peto vs. Reynolds* (1855), 11 Exch. 418, Ex. Ch., but he may be liable as the maker of a note: *Fielder vs. Marshall* (1861), 30 L. J. C. P. 158.

(2) Instrument in the form of a bill payable to drawer's order, not containing the name of a drawee, but expressed to be payable “at No. 1 Union Street, London.” B., who lives there, accepts it. This is a bill, and B. is liable as acceptor: *Gray vs. Milner* (1819), 8 Taunt. 739.

21. Transfer Words.—When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties hereto, but it is not negotiable.

2. Negotiable Bill.—A negotiable bill may be payable either to order or to bearer.

3. When Payable to Bearer.—A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank.

4. Certainty of Payee.—Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

5. Fictitious Payee.—Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer. 53 V., c. 33, ss. 7 and 8. Eng. ss. 7 and 8.

PAYABLE EITHER TO ORDER OR BEARER.—As to when a bill is payable to order, see sec. 22.

Where a bill is negotiable in its origin, it continues to be negotiable until it has been, (a) respectively endorsed; or, (b) discharged by payment or otherwise (sec. 69).

A blank endorsement may be converted by any holder of the bill into a special endorsement (sec. 67).

PAYEE MUST BE NAMED OR OTHERWISE INDICATED WITH REASONABLE CERTAINTY.—A bill may be made payable to the holder of an office for the time being (sec. 19).

The payee need not be mentioned by name. It is sufficient that he be indicated so that he can be clearly identified. Extrinsic evidence is admissible to identify the payee when misnamed, or when designated by description only, but not to explain away an uncertainty patent on the bill: *Sagres vs. Glyn* (1845), 8 Q. B. 24 Ex. Ch. Thus, if a bill is payable "to the order of the Treasurer of Portugal," evidence is admissible to show that C. was the treasurer when the bill was issued. Cf. *Holmes vs. Jacques* (1886), L. R., 1 Q. B. 376; and if the bill is payable "to the order of J. Smythe," evidence is admissible to show that T. Smith is the person intended to be described thereby: *Willis vs. Barrett* (1816), 2 Stark 29. But if a bill be drawn in the form "Pay——— or order," evidence is not admissible to show that C. was intended to be the payee: *R. vs. Randall* (1811), R. & R. 195. In a New York case a note payable "to the order of the indorser" was held good as being payable to any holder who might indorse it: *United States vs. White* (1841), 2 Hill, R. 59. By section 64, where the payee is wrongly designated or his name is mis-spelt, he may endorse the bill as therein described, adding, if he thinks fit, his proper signature. If the name of the payee be left in blank, the legal holder of the bill may fill up blank. *Bagley vs. Ellison* (1890), 16 V. L. R. 263.

PAYEE A FICTITIOUS OR NON-EXISTING PERSON.—The acceptor of a bill by accepting it is precluded from denying to a holder in due course the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill, or the existence of the payee and his capacity to endorse (sec. 129). This was the law before the Act, the law in this respect being based on the principle of estoppel. The genuineness of the endorsement of the payee was, however, a matter as to which, except in one special instance, no estoppel prevailed. This exception was that a bill drawn to the order of a fictitious or non-existing payee might be treated as payable to bearer, but the estoppel applied only against the parties who at the time they became liable on the bill were cognizant of the fictitious character or of the non-existence of the supposed payee.

Now by the Act, if the payee is a fictitious or non-existing person, the bill may be treated by all persons as payable to bearer. "Fictitious" means fictitious by the pretence of some party to the bill. So if the drawer really intends that payment shall be made to the payee, who is an existing person known to him, the bill may not be treated as payable to bearer, although the drawer has been induced by fraud to draw the bill and there is no real transaction between the drawer and the payee upon which the bill might be

based and which would justify the payee in endorsing the bill. If, however, the drawer inserts a name as payee without intending to represent any real person thereby, the bill may be treated by all persons as payable to bearer. So also if the signature of the drawer has been forged.

See Bank of England vs. Vagliano (1891) A. C. 107; *Clutton vs. Attenborough* (1897) A. C. 90; *London Life vs. Molsons Bank* (1904), 8 O. L. R. 238; *Vinden vs. Hughes* (1905), 1 K. B. 795; *North and South Wales vs. Macbeth* (1908) A. C. 137; *N. and S. W. Bank vs. Irvine* (1908), A. C. 141; *Falconbridge*, pp. 375 *et seq.*

Buchanan vs. Napier, 16 Que. K. B. 347.

The assignment of an hypothecary claim as the consideration for the assignees discounting the note of a third party for the benefit of the assignor, creates no indebtedness by the latter to the assignee.

22. Bill Payable to Order, When.—A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

2. When Payable to Person or Order.—Where a bill, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option. 53 V., c. 33, s. 8. Eng. s. 8.

If the acceptor of a bill payable to drawer or order when accepting it strikes out the words "or order" and writes over his acceptance the words "in favor of drawer only," the alteration is immaterial, and the negotiability of the bill is not affected: *Decroix vs. Meyer* (1890), 25 Q. B. D. 343, C. A. affirmed (1891) A. C. 520. H. L. A *bon* made payable to a party therein named is negotiable though the words "or order" are omitted: *Desy vs. Daly*, 3 Rev. de Jur. 492 (1897).

If a bill contains words prohibiting transfer or indicating an intention that it should not be transferable, it is valid as between the parties, but it is not negotiable (sec. 21).

Cf. secs. 68 and 69.

Sub-sec. 2 provides that a bill payable "to the order of C." is in legal effect the same as "to C. or order."

23. Payable on Demand, when.—A bill is payable on demand,—

(a) which is expressed to be payable on demand or on presentations or—

(b) in which no time for payment is expressed:

2. Endorsed when Overdue.—Where a bill is accepted or endorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any endorser who so endorses it, be deemed a bill payable on demand. 53 V., c. 33, s. 10, Eng. s. 10.

If a bill is not payable on demand, three days of grace are in

every case, where the bill itself does not otherwise provide, added to the time of payment (sec. 42). The effect of the Act is that bills payable on presentation are demand drafts and are not entitled to days of grace, but that sight drafts, in accordance with the custom prevailing in this country prior to the Act, are entitled to days of grace. In England bills payable at sight as well as those payable on presentation are demand drafts and not entitled to days of grace.

Bank of B. N. A. vs. Warren (1909) 14 O. W. R. 325.

M. had a bank account with plaintiffs overdrawn \$409.53. On 23rd May he sent from Chicago to plaintiffs at Toronto for deposit a cheque for \$1,000 dated 16 May. Plaintiffs placed this cheque to M.'s credit on the 26th May, shewing a credit then in his account of \$590.41. Cheque came back, defendants having refused payment, claiming M. had given no consideration for it.

Held, that plaintiffs gave consideration, that there was no unreasonable delay in transmission of cheque to plaintiffs. Judgment at trial (12 O. W. R. 1157) varied. Judgment for plaintiffs for \$1,000.

A bill payable on demand is deemed to be overdue for the purposes of negotiation, when it appears on the face of it to have been in circulation for an unreasonable length of time (sec. 70). A demand bill must be presented for payment within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement in order to render the indorser liable (sec. 86). The provisions of the Act applicable to a bill payable on demand apply to a cheque except as otherwise provided, in Part III. (see sec. 165). As to presentment for payment of a note payable on demand, see secs. 180 and 181. As to presentment for acceptance, see sec. 75.

A bill payable otherwise than on demand is overdue after the expiration of the last day of grace. As to the negotiation of an overdue bill, see sec. 70.

A bill may be accepted when it is overdue (sec. 37).

Northern Crown Bank vs. International Electric Co., 24 O. L. R. 57.

McDonald vs. Morgan, 49 N. S. R. 1; 22 D. L. R. 705.

Where there has been no deceit as to the actual terms of the note, fraud is not shewn upon which to invalidate the sale of goods by the selling agent's representations that the buyer would not have to pay anything on the price until May 1st, while at the same time the agent obtained the buyer's signature to a promissory note maturing at an earlier date, which note remaining was in the possession of the payee, the buyer was not in fact called upon to pay sooner.

24. Determinable Future Time—Sight—Specified Event.—

A bill is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable.—

(a) at sight or at a fixed period after date or sight;

(b) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain. 53 V., c. 33, s. 11; 54-55 V., c. 17, s. 1. Eng. s. 11.

Subject to the provisions of the Act, when a bill payable at

sight or after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time (sec. 77). Presentment of such a bill for acceptance is necessary in order to fix the maturity of the instrument (sec. 75).

As to the due date of bill payable as described in this section, see secs. 44, 45 and 46. See also sec. 150 (acceptance for honour).

When a bill is not payable on demand, it is duly presented for payment if presented on the day it falls due (sec. 86). Three days of grace, where the bill itself does not otherwise provide, are added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace (sec. 42).

An instrument payable on a contingency is not a bill and the happening of the event does not cure the defect (sec. 18).

There is no limitation as to length of time. "If a bill of exchange be made payable at never so distant a day, if it be a day that must come, it is no objection to the bill." Per Willies, C. J., in *Colehan vs. Cooke*. Willes 396.

See Section 44 (2) (3) as to fixing the due date of bills in ordinary cases, and section 150 as to the due date when accepted for honor. "After sight" in a bill means after acceptance or noting for protest for non-acceptance, i. e., sight evidenced on the bill.

Among other things death has been held to be an event certain to happen, and bills and notes payable upon, or a specified time after the death of a person have been declared valid, *vide Cooke vs. Colehan*, 3 Str. 1217 (1742); *Roffey vs. Greenwell* (1839), 10 A. and E. 222; but notes payable "when I marry X." *Pearson vs. Garrett* (1689), 4 Mod. 242, "when I am in good circumstances." *Ex parte Tootell* (1789), 4 Ves. 372, and "ninety days after the dissolution of partnership between C. and X., and the settling of the books." *Sackett vs. Palmer* (1857), 25 New York R. 179, have been declared invalid. A bill, however, may be made payable at a particular fair or exhibition, though the day on which it will be held is not known: *Colehan vs. Cooke*, *supra*.

25. Inland Bill Defined.—An inland bill is a bill which is, or on the face of it purports to be,—

- (a) both drawn and payable within Canada; or,
- (b) drawn within Canada upon some person resident therein.

2. Other Bills.—Any other bill is a foreign bill.

3. Presumption.—Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. 63 V., c. 33. s. 4. Eng. s. 4.

A foreign bill if dishonoured must be duly protested (sec. 112), whereas, except in the Province of Quebec, it is not necessary to note or protest an inland bill (sec. 113), notice of dishonour alone being sufficient.

Where a foreign note is dishonoured, protest thereof if unnecessary, except for the preservation of the liabilities of endorsers (sec. 187). See sec. 177 as to when a note is a foreign or an inland note.

"Unless the contrary appears on the face of the bill," i. e., unless something on the face of the bill indicates that it is a foreign bill, the holder may treat it as an inland bill, although it does not

purport to be (a) both drawn and payable within Canada, or (b) drawn within Canada upon some person resident therein.

As to place of payment for purposes of presentment, if no place of payment is specified in the bill, see sec. 88. As to measure of damages when a bill is dishonoured abroad, see sec. 136. As to conflict of laws, see secs. 160 *et seq.*

26. Bill or Note—Option.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note. 53 V., c. 33, s. 5. Eng. s. 5.

Cf. sec. 21 as to fictitious payee.

As to incapacity to contract, see sec. 47, which provides that capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Presentment for acceptance is excused where the drawee is a fictitious person or a person not having capacity to contract by bill (sec. 79). Presentment for payment is dispensed with where the drawee is a fictitious person (sec. 92).

Notice of dishonour is dispensed with as regards the drawer where (a) the drawer and drawee are the same person; (b) the drawee is a fictitious person or a person not having capacity to contract (sec. 107). Notice of dishonour is dispensed with as regards the endorser, where the drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the bill (sec. 108).

27. Valid Bill—Not dated—Statement of Value—Statement of Place—Irregular Date.—A bill is not invalid by reason only,—

(a) that it is not dated;

(b) that it does not specify the value given, or that any value has been given therefor:

(c) that it does not specify the place where it is drawn or the place where it is payable:

(d) that it is antedated or postdated, or that it bears date on a Sunday or other non-judicial day. 53 V., c. 33, ss. 3 and 13. Eng. ss. 3 and 13.

A bill without a date is irregular, although not invalid; such a bill is presumed to be dated on the day of the delivery, *Giles vs. Bourne*, 6 M. & S. 73. As to filling in the date in the case of an undated bill or acceptance, see sections 30 and 31. The alteration of the date is a material alteration, section 14 (6).

In the case of an accepted bill payable to the drawer's order, the words "value received" mean value received by the acceptor: *Higmore vs. Primrose*, 5 M. & S. 65 (1816); while, in a bill payable to a third party, they mean *prima facie* value received by the drawer; *Grant vs. Da Costa* (1815), 3 M. and S. 351 (1815).

If no place of payment is specified the bill is payable generally. It may be payable at either of two places at the option of the holder. *Beeching vs. Gower*, Holt N. P. C. 313 (1816). As to presentment for payment when no place of payment is specified and

the address of the drawee is not given, see section 88. The addition of, or change in, a place of payment is a material alteration, section 146.

Time is computed on ante-dated or post-dated bills from the actual date they bear, and the fact that a cheque is post-dated does not make it irregular within the meaning of section 31 so as to charge the holder with equities of which he had no notice; *Hitchcock vs. Edwards* (1889), 60 L. T. N. S. 636. To ante-date a deed in order to defraud a third party is a forgery; and the same principle would doubtless apply to bills and notes (Chalmers, p. 34). The death of one of the parties to a post-dated bill before the day of its date does not prevent title being derived through him on its being shewn that it was post-dated; *Passmore vs. North* (1811), 13 East 517.

Sunday.—If a bill is given in pursuance of a contract declared by statute to be illegal as being made on a Sunday in the course of a man's ordinary calling, it would be void as between the immediate parties and as to any person who takes it with notice, but the mere fact of its being dated on a Sunday would not be such notice: *Crombie vs. Operholtzer*, 11 U. C. Q. B. 55.

SEC. 27 declares that a bill is not invalid by reason only that it bears date on a Sunday. The Act does not say that a bill made on Sunday shall be valid. Such a bill would seem to be affected with illegality, except as against a holder in due course (sec. 58), if the consideration is a contract forbidden by statute to be made on Sunday.

28. Sum Certain — Interest — Instalments—Default — Exchange.—The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid,—

(a) with interest;

(b) by stated instalments;

(c) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;

(d) according to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill.

2. Figures and Words.—Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

3. With Interest.—Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof. 53 V., c. 33, s. 9. Eng. s. 9.

A bill or a note must be for the payment of a "sum certain" (secs. 17 and 176).

An alteration of the sum payable is a material alteration (sec. 46.)

WITH INTEREST.—A bill for £100 payable "with lawful interest"

is valid. (*Warrington vs. Early*, 1853, 2 E. & B. 763).

The rate of interest in Canada, whenever any interest is payable by the agreement of parties or by law, and no rate is fixed by such agreement or by law, is five per centum per annum (R. S. C., c. 120 sec. 3). See also secs. 91 and 92 of the Bank Act.

See "issue" defined by section 2. Interest proper, payable by the instrument itself, must be distinguished from interest by way of damages, payable on its dishonour. As to the latter, see section 57.

If a wrong date is inserted in a bill which comes into the hands of a holder in due course he can collect interest from the date inserted, even if it be previous to the true date of issue. Sections 30 and 31.

Instalments.—The instalments may be either with or without interest. Each instalment is treated as a separate bill with regard to days of grace, presentment and notice of dishonor. A bill payable "by two equal instalments due 1st January and 1st July" is valid, *Gaskin vs. Davis* (1860), 2 F. & F. 294; but a bill payable "by instalments," not specifying dates or amounts or payable "by equal instalments to cease on the death of X" would be invalid: *Moffat vs. Edwards* (1841), Car. & M. 16; *Worley vs. Harrison* (1835), 3 A. & E. 669.

Exchange.—Where a bill is to be paid in one country, and the sum is expressed in the currency of another, the amount is determined according to the rate of exchange on the day the bill is payable: *Hirschfield vs. Smith*, L. R. 1 C. P. 340 (1866). A bill payable "at exchange as per last indorsement," or "according to the course of exchange upon Paris," would be valid: *Cf. Pollard vs. Harries* (1803), 3 B. and P. 335. Cf. sec. 163.

The indorsement of a rate of exchange without authority is a material alteration which may avoid the bill: *Hirschfield vs. Smith*, *supra*.

The rule in sub-section 2 is so binding that when the figures in the margin differ from the amount in words, evidence is inadmissible to show that the amount in figures is the correct one: *Saunderson vs. Piper*, 5 Bing. N. C. 425; but when the words are not distinct the figures in the margin may be looked at to explain them. *Beardsley vs. Hill*, 61 Ill. 354 (1871).

29. True Date Presumption.—Where a bill or an acceptance, or any endorsement on a bill, is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance or endorsement, as the case may be. 53 V., c. 33, s. 13. Eng. s. 13.

Parole evidence is admissible to show that the date on the bill is not the true date: *Biggs vs. Piper*, 86 Tenn. 589 (1888).

If a bill be dated on an impossible day, such as the 31st September, the law adopts the nearest day by the doctrine of *cy pres*, and the computation will be from the 30th September: *Wagner vs. Kenner*, 2 Robinson (La) 120 (1842).

Chaurest vs. Provost, 16 Que. P. R. 153.

The law does not require the endorsement to be dated; it does not even impose any penalty for ante-dating or post-dating.

Bank of B. N. A. vs. McKinnon, 7 W. W. R. 689.

Endorsement—dating of—liability of endorsee—Bills of Exchange Act.

30. Undated Bill Payable after Date—Inserting Wrong Date—Liability of Holder.—Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at sight or at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that,—

(a) where the holder in good faith and by mistake inserts a wrong date; and,

(b) in every case where a wrong date is inserted; if the bill subsequently comes into the hands of a holder in due course the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date. 53 V., c. 33, s. 12; 54-55 V., c. 17, s. 2. Eng. s. 12.

See “issue” and “holder” defined by section 2, “good faith” by section 3, and “holder in due course” by section 56.

This presumption of authorization to insert true date of issue or acceptance is now extended, as regards the kind of bills named, to any payee or indorsee in possession of the bill and to the bearer.

See section 31 for the general rule as to material omission in a bill, and the consequences of supplying them, and section 146 as to material alterations.

Where the acceptance is not dated, the bill is presumed to have been accepted a few days after its date: *Roberts vs. Bethell* (1852) 13 C. B. 778.

Demers vs. Lercillé, 20 D. L. R. 976.

Filling in blanks.

31. Perfecting Bill—Authority.—Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer or acceptor, or an endorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. 53 V., c. 33, s. 20. Eng. s. 20.

Sec. 30 provides for the special case where a bill payable after date is issued undated or an acceptance payable at sight or after sight is undated.

Every contract on a bill, whether it is the drawer's, the acceptor's or an endorser's, is incomplete and revocable until delivery of the instrument in order to give effect thereto (sec. 39, cf. secs. 40 and 41).

Delivery means transfer of possession, actual or constructive, from one person to another (sec. 2).

The simple signature on a blank paper must be delivered by the signer in order that it may be converted into a bill, and a bill wanting in a material particular must be delivered within the meaning of the Act, before any authority is implied to complete the bill.

Campbell vs. Bourque, 24 Man. L. R. 252; 17 D. L. R. 262.

An action cannot be maintained, even by a subsequent holder without notice of the fraud, as against the person who a blank printed form of promissory note and delivers it to another as custodian only and without any authority to fill up the blank or to make himself payee or to get an advance or borrow money on the note, where the custodian held the same as promoter of a proposed company which when organized was to become the payee as consideration for the signer's stock subscription and where the promoter fraudulently filled up the note by making himself payee (the company not having been incorporated) and making the note payable in 60 days.

Bell vs. Schultz, 4 D. L. R. 400, 21 W. L. R. 408.

A vendor may, after the execution and delivery of a lien note from which his name was omitted, given for personalty purchased at an auction sale, the terms of which required such a note to be given, insert his name in the blank space intended therefor.

Sec. 31 is inapplicable to a document which has not been delivered in order that it may be converted into a bill. So if a person hands his agent a blank form of note signed by him, to be used by the agent in case he is instructed by the principal at some future time, the principal is not liable if the agent without authority fills in and negotiates the note. *Smith vs. Prosser* (1907), 2 K. B. 735, distinguishing *Lloyd's Bank vs. Cooke* (1907), 1 K. B. 794.

Fraser vs. Ekstrom (1899), 6 Terr. L. R. 464.

Note signed in blank by defendant, and in error, filled out for more than his debt. Plaintiffs were innocent holders.

Held, this constituted an equity to which the note was subject; plaintiffs could not recover more than could the payee, but owing to the defences set up they were given costs. This, notwithstanding section 20, sub-sec. 1, and section 30, sub-sec. of the Bills of Exchange Act, 1890.

Brown vs. Chamberlain, 2 D. L. R. 918, 3 O. W. N. 569.

Blank note filled up and used for unauthorized purposes. Decision as to liability of maker.

Bacon vs. Decarie, 34 Que. S. C. 103.

A party who signs and delivers a blank paper in order that it may be converted into a bill, on a certain condition, is liable, for the amount of the bill into which the paper is converted, to the holder in whose presence the conversion or filling in takes place, and, *a fortiori*, to a subsequent holder in due course.

Ray vs. Wilson, 24 O. L. R. 122, 19 O. W. R. 470.

Confirmed in Supreme Court, 45 Can. S. C. R. 401.

Where a blank note was given by defendant to T. to be by him filled out only upon further instructions from defendant, and T. filled it out without such instructions and handed it to plaintiff as security for a loan, and plaintiff sued defendant upon it.

Held, that defendant did not part with the note with the intention that it should then be converted into a promissory note by T., it was delivered to him only as custodian; the plaintiff could not recover.

Following *Smith vs. Prosser* (1907), 2 K. B. 735.

Hubbert vs. Home Bank, 20 O. L. R. 651.

Where a document in the form of a promissory note, but "wanting" in some "material particular" is not "delivered" in order

that it may be converted into "a promissory note, payment cannot be enforced against the maker," even by a holder in due course, under secs. 31 and 32.

Smith vs. Prosser (1907), 2 K. B. 735, followed.

32. When to be Complete.—In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given; Provided, that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Ray vs. Willson, 45 Can. S. C. R. 401.

W. sent his agent some signed blank promissory notes to be used under certain circumstances to pay for certain repairs to W.'s property. The agent filled in one and used it for his own purposes. A holder sued W. thereon. It was proved that the notes were not to be used until he had been notified and authorized their use. The trial judge also found that the surrounding circumstances were such as to put the holder on inquiry as to the agent's right to discount.

Held, confirming the trial finding and the judgment in appeal, that (*Fitzpatrick, C. J., dubitanter*). Secs. 31 and 32 of the Act did not apply and the holder could not recover.

2. Reasonable Time.—Reasonable time within the meaning of this section is a question of fact. 53 V., 33, s. 20. Eng. s. 20.

This section is supplementary to sec. 31.

The onus of proving the delivery of the blank paper by the signer in order that it might be converted into a bill or note is on the holder. Once it is proved that it was so delivered, the onus is shifted, and it is then for the signer to prove that it was not filled up within a reasonable time or in accordance with the authority given.

Extrinsic evidence of all the material circumstances is admissible to determine what is a reasonable time: *Hales & London & North Western Railway*, 4 B. & S. 66. It is for the party seeking to enforce the bill to account for the delay if it has been unusual, but when the signer seeks to escape liability on the ground that the authority given has been exceeded, the onus of proof is upon him as the holder has *prima facie* authority to fill it up as he sees fit.

Death revokes the authority to fill up a bill unless the holder be a holder for value.

The instrument so taken must have been originally delivered as a bill or delivered in an incomplete state in order that it might be converted into a bill. When a bill or note is written over a signature given for other purposes, the signer is not liable: *Ford vs. Auger*, 18 L. C. J. 296; *Banque Jacques Cartier vs. Lescard*, 13 Q. L. R. 39. If a bank acceptance is stolen from the signer and filled up, he is not liable to a holder in due course: *Barendale vs. Bennett*, 3 Q. B. D. 525. The liability of the signer begins when the bill is first issued complete in form, and not when he signs: *Ex parte Hayncard* (1871), L. R. 6 Ch. 546.

An indorser of a note who signs before the maker or payee, and before the amount is filled up, is liable on the note as completed:

Rossin vs. McCarthy, 7 U. C. Q. B. 100 (1849).

Ray vs. Willson (1910), 1 O. W. N. 1005, 16 O. W. R. 578. Clute, J.

Defendant signed a note in blank and handed it to his agent to be filled in and discounted should it become necessary for defendant to raise money to make repairs on certain property. The agent fraudulently filled in the note for \$1,000 and pledged it with a bank as collateral security for agent's personal account. This was done long after the note had been left with the agent. Defendant never required to use the note for said repairs and received no consideration.

Held, that defendant was not liable; that he never intended or authorized the paper sued on to be filled up as a promissory note; that the circumstances never arose upon which only the agent was authorized to fill the same up, and that what was done by agent was without authority, and in fraud of the defendant; and that the paper sued on never in fact by the defendant's authority became a promissory note.

Smith vs. Prosser (1907), 1 K. B. 735, followed.

Lloyd's Bank vs. Cooke (1907), 1 K. B. 794, distinguished.

Barendse vs. Bennett, 3 Q. B. D. 525 (Lord Bramwell) cited.

33. Referee in Case of Need.—The drawer of a bill and any endorser may insert therein the name of a person, who shall be called the referee in case of need, to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment.

2. Option.—It is in the option of the holder to resort to the referee in case of need or not, as he thinks fit. 53 V., c. 33, s. 15. Eng. s. 15.

A bill must be protested or noted for protest before it can be presented to the case of need (secs. 17 and 147. *et seq.*).

34. Stipulations—Limiting—Waiving Rights.—The drawer of a bill, and any endorser, may insert therein an express stipulation,—

- (a) negating or limiting his own liability to the holder;
 - (b) waiving, as regards himself, some or all of the holder's duties.
- 53 V., c. 33, s. 16. Eng. s. 16.

Compare sections 66 and 68 as to conditional and restrictive indorsements. It has been held in the United States that an indorser without recourse is responsible to the same extent that a transferrer by delivery is responsible, e.g., where the bill is a forgery. *Hannum vs. Richardson* (1875), 21 Amer. R. 152. As to the ordinary liability of an indorser, see section 133, and as to the liability of a transferrer by delivery, see section 137. As to indorsements or guarantees by parties who have never been holders, see section 131.

The provisions of this section are limited to the drawer or indorser. An acceptor may accept conditionally, see section 38,

but he cannot accept so as to make himself secondarily, and not primarily, liable on the bill (Chalmers).

(b) waiving, as regards himself, some or all of the holder's duties.

Chalmers gives the following illustration:—C., the holder of a bill, indorses it to D., adding the words "notice of dishonour waived." No subsequent party is obliged to give notice of dishonour to C. Such an indorsement relates only to the indorser's liability, and does not otherwise affect the negotiation of the bill.

In the United States it has been held that an indorsement in the above form dispenses with the necessity of notice to all subsequent indorsers, *Parshley vs. Heath* (1879), 31 Amer. R. 246 (Daniel, section 1090), but the English and Canadian Acts appear to contemplate the restriction of the waiver to the drawer or indorser who expressly waives any of the holder's duties "as regards himself." (Chalmers.)

Rat Portage Lumber Co., Ltd. vs. Margulius, 24 Man. L. R. 230, 15 D. L. R. 577.

Where the endorser of a promissory note, when endorsing, waives protest, this imports waiver of notice of dishonour. (Affirmed in 16 D. L. R. 477.)

ACCEPTANCE AND INTERPRETATION.

35. Acceptance Defined.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

2. Drawee's Name Wrong.—Where in a bill the drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature. 53 V., c. 33, s. 17. Eng. s. 17.

The sections of this Act which relate to acceptance do not apply to promissory notes; see sec. 186.

Acceptance is defined by secs. 35 and 36.

It may be general or qualified (sec. 38).

The time of acceptance is provided for by sec. 37.

As to acceptance *supra* protest, see sec. 147, and as to acceptance of bills in a set, see secs. 158 and 159.

The acceptance may be written on any part of the bill provided it is clear that an acceptance was intended: *Young vs. Glover*, 3 Jur. N. S. 637 (1857). It need not be dated, but it ought to be when the bill is at sight or so many days after sight. The drawee must accept upon presentment or at least within two days thereafter (sections 80 and 81). He may revoke his acceptance at any time before he delivers it or gives notice that he has accepted, but afterwards his act is irrevocable (section 39). His liability under the acceptance is set out in section 128. A promise to accept is not an acceptance and the acceptance to pay by another bill is invalid. *Russell vs. Phillips*, 14 Q. B. 891. No person except the drawee or authorized agent can be liable as acceptor of a bill (*Steele vs. McKinley*, 5 App. Cas. 770) save the referee in case of need (section 43) or the acceptor for honour (sec. 147). Where a bill is

addressed to a firm, the signature of one of the partners or an agent binds the firm (section 131). If the partner signing adds also his own name, it is the acceptance of the firm and not of himself personally, *re Barnard, Edwards vs. Barnard* (1886), 32 Ch. D. 447, C. A.; but if he accepts simply in his own name, he is personally liable and the firm is not bound: *Owen vs. Von Oster* (1850), 10 C. B. 318. If a partner accepts in the firm's name a bill addressed to himself, the firm is not bound, but he is personally liable, as the firm name is merely a compendious form of expressing the individual names or signatures of all the partners: *Nicholls vs. Diamond* (1853), 9 Exch. 154. An agent who signs a bill for his principal without authority, though not liable on the instrument, may be liable to the holder in an action for falsely representing that he had authority: *West London Bank vs. Kitson* (1884), 13 Q. B. D. 360, C. A. A bill drawn on a Corporation should be addressed to the Company and not to its directors or officers, as it is frequently difficult to decide whether the drawee is the Company or the directors or officers individually. (See cases in *Maclaren*.) A note or a bill is deemed to have been made, accepted or indorsed on behalf of the company, if made, accepted or indorsed (a) in the name of the Company by any person acting under the authority of the Company, or (b) by or on behalf of or on account of the Company by any person acting under its authority. The accurate and full name of the Company is important. Where a Company is "limited," that word forms a part of its name, and any acceptance omitting this does not bind the Company: *Atkins vs. Wardle*, 58 L. J. Q. B. 377 (1889).

Smith vs. Mason, 40 Que. S. C. 75.

Where the personal drawee was the agent of the United Fire Agencies, Ltd., a corporation, and he wrote thereon the word "accepted" and signed his name below, but with the following words after his signature, "for the United Fire Agencies, Ltd." such is not the personal acceptance of the drawee and he therefore incurs no personal liability thereby.

36. Acceptance—On the Bill—For Money.—An acceptance is invalid unless it complies with the following conditions, namely:—

- (a) It must be written on the bill and be signed by the drawee;
- (b) It must not express that the drawee will perform his promise by any other means than the payment of money.

2. Mere Signature.—The mere signature of the drawee written on the bill without additional words is a sufficient acceptance. 53 V., c. 33, s. 17. Eng. s. 17.

Cf. notes to sec. 55.

37. Acceptance—Before Completion—Overdue.—A bill may be accepted,—

- (a) before it has been signed by the drawer, or while otherwise incomplete;
- (b) when it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

2. Acceptance after Dishonour.—When a bill payable at sight or after sight is dishonoured by non-acceptance, and the

drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. 53 V., c. 33, s. 18; 54-55 V., c. 17, s. 3. Eng. s. 18.

The holder may treat a bill as dishonoured by non-acceptance if it turns out that the drawee was incompetent to contract.

A bill accepted when overdue is payable on demand, section 23 (2). After a bill has been refused acceptance, and notice of dishonour has been given, the holder may apply to the referee in case of need if there be one named in the bill, section 34; or it may be accepted for honour by a third party, section 64; or the drawee may change his mind and accept. If he should do so the date from which time should run is fixed by the sub-section 2.

If the holder took an acceptance of a later date it would be a qualified acceptance, and he would do so at his own risk. (MacLaren).

Unless the contrary appears by its terms, a bill of exchange is *prima facie* deemed to have been accepted before maturity and within a reasonable time after its issue, but there is no presumption as to the exact time of acceptance. For example, B. accepts, without dating, a bill drawn payable three months after date. He attains his majority the day before the bill matures. This is *prima facie* evidence that B. accepted it while an infant: *Roberts vs. Bethell* (1852), 12 C. B. 778.

38. Kinds.—An acceptance is either,—

- (a) general; or,
- (b) qualified.

2. **General.**—A general acceptance assents without qualification to the order of the drawer.

3. **Qualified.**—A qualified acceptance in express terms varies the effect of the bill as drawn and in particular, an acceptance is qualified which is,—

(a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;

(b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

Standard Bank vs. Wettlaufer, 33 O. L. R. 441; 23 D. L. R. 507.

A bank receiving a bill of exchange before maturity, with knowledge of the conditions as to its acceptance, does not stand in the position of a holder in due course, and can only claim on it by way of equitable assignment.

(c) qualified as to time;

(d) the acceptance of some one or more of the drawees, but not of all.

4. **Specified Place.**—An acceptance to pay at a particular specified place is not on that account conditional or qualified. 53 V., c. 33, s. 19. Eng. s. 19.

If there are several drawees and they do not all accept, those who do are bound. A partner may accept in his own name a bill

addressed to his firm, and it is a valid acceptance for himself. *Owen vs. Von Isten*, 1850, 10 C. B. 318.

By section 83, the holder may refuse to take a qualified acceptance. If he takes it, he must give notice to the drawer and indorsers, who may decline to be bound by it, but they must express their dissent within a reasonable time, or their acquiescence is presumed. If no notice is given, the drawer and indorsers are discharged, unless they have authorized the taking of the qualified acceptance.

Words importing a conditional or qualified acceptance will be construed most strongly against the restriction of the acceptor's liability, and to have effect must show in clear and unequivocal terms, on the face of the bill, that the acceptance is so qualified: *Smith vs. Virtue*, 30 L. J. C. P. 60. Where a bill was payable to drawer's order and the acceptor struck out the words "or order" and wrote over his acceptance the words "in favor of the drawer only," it was held that the acceptance was not qualified and that an indorsee could sue the acceptor: *Meyer vs. Decroix* (1891), App. Cases 520. In *Fanshawe vs. Peet* (1857), 26 L. J. Ex. 314, it was held that a mere memorandum, such as a wrong due date, introduced into the acceptance, contrary to the tenor of the bill, formed no part of the acceptance, and therefore did not make it qualified (Campbell's Ruling Cases, Vol IV., Rules 8, 9 and 10). If the bill as drawn specified a particular place of payment, and the acceptance names a different one, this would be such a variance as would make the acceptance a qualified one: *Rowe vs. Young*, 2 B. & B. 165 (1820).

Where the acceptance on a bill is unconditional, parole evidence cannot be received to show that it was accepted conditionally: *Bradbury vs. Oliver*, 5 U. C. O. 703.

The following are examples of conditional acceptances:—

(1) "If a certain house shall be finished:" *Dufresne vs. Jacques Cartier Building Society*, 5 R. L. 235 (1873).

(2) "When certain debentures are sold:" *Ontario Bank vs. McArthur*, 5 Man. 381 (1889).

(3) "When certain debentures are sold:" *Russell vs. Phillips*, 14 Q. B. 891.

As to partial acceptance, see further section 84.

The acceptor may vary the time of payment named by the bill, and if none be named he may fix a time, and he will be bound by it: *Russell vs. Phillips*, *supra*.

39. When Acceptance Complete—Proviso.—Every contract on a bill, whether it is the drawer's, the acceptor's or an endorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto: Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable. 53 V., c. 33, s. 21. Eng. s. 21.

This section and secs. 40 and 41 must be read together.

The following sections contain provisions relating to the different "contracts on a bill."

Secs. 130 to 133: drawer or endorser;

Secs. 35, 38 and 128: acceptor.

Delivery means transfer of possession, actual or constructive, from one person to another: see sec. 2, sub-sec. 1 (f).

The acceptance must be in writing, but the notification may be either written or verbal.

Delivery is necessary also to render the contract of the maker or indorser of a promissory note complete and irrevocable. The mailing of the bill to the party to whom it is addressed constitutes delivery: *Ex parte Cote* (1873), L. R. 9 Ch. 27.

If the indorser of a bill or note delivers it to his own agent, he can recover it; if to the agent of the indorsee, he cannot recover it. A delivery by mistake may be revoked by mutual consent: *Ex parte Cote, supra*.

DELIVERY.

40. Requisites—Authority—Conditional.—As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery.—

(a) in order to be effectual must be made either by or under the authority of the party drawing, accepting or endorsing, as the case may be;

(b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

Auger vs. McDonnell, 20 D. L. R. 363.

A promissory note given to a company upon the express written conditions not appearing on the face of the note but in the accompanying correspondence, that the note was for the purchase of certain bonds of the company and was to become null and void in case other parties did not purchase a like amount, is not thereby rendered negotiable and may be recovered in the hands of a holder in due course for value without notice of the condition when he took the note although no bonds were issued.

2. Presumption.—If the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed. 53 V. c. 33, s. 21. Eng. s. 21.

Vineberg vs. Jones, 22 Que., K. B. 128.

The enactment in sec. 40 of the Bills of Exchange Act, ch. 119, R. S. C., 1906, that "delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the bill," goes no further than to make evidence admissible to show that what purports to be a complete contract, has never come into operative existence, from lack of lawful delivery. It does not vary the rule of law that evidence is inadmissible to contradict the terms of a written instrument. Hence, in an action brought on a promissory note, by the payee against the maker, the defendant cannot set up the defence that it was given conditionally, to secure the plaintiff against loss from depreciation of certain mining stock, and that the condition never arose.

41. Parting with Possession.—Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or endorser, a valid and unconditional delivery by him is presumed until the contrary is proved. 53 V., c. 33, s. 21. Eng. s. 21.

"Holder in due course" is defined by sec. 56.

The contracts on a bill are contracts in writing, and, subject to the provisions of section 40, parole evidence is not admissible to vary the rights and obligations of the parties as appearing upon the face of the instrument, except to shew (1) that the date of the bill or note is not the true date, section 29, or (2) that the delivery is incomplete and conditional only, so that the contract is not operative, section 41, or (3) to impeach the consideration for the contract and prove its absence, failure or illegality. *Northfield vs. Lawrence*, M. L. R., 7 S. C. 148 (1891); *Abrey vs. Cruik*, L. R. 5 C. P. 37 (1869); or (4) to show that the contract has been discharged by payment, release or otherwise: *Hamilton vs. Perry*, Q. R., 5 S. C. 76 (1894), *Smith vs. Squires* (1901), 13 Man. R. 360; *Emerson vs. Erwin*, 10 B. C. R. 101, but see section 142.

Where a bill has been delivered conditionally or for a special purpose only, and the person who has so received it violates his trust, the owner may recover the bill or its amount from such person or anyone who has taken it with notice: *Muttyloll Seal vs. Dent*, 8 Moore P. C. 319 (1853).

A bill or note may be delivered conditionally, and upon the happening of the event or fulfillment of the condition, no further delivery is necessary. What was before a mere paper writing becomes a valid bill. The death of the parties liable does not prevent the bill taking effect: *Giddings vs. Giddings*, 51 Vt. 227 (1878).

As between immediate parties, a contemporaneous agreement, (cf. *Brown vs. Langley* (1842), 4 M. & Gr. 466, or a subsequent written agreement, *McManus vs. Bark* (1870), L. R. 5 Ex. 65, but not an oral agreement, *New London Credit Syndicate, L. D. vs. Neale*, C. A. (1898), 2 Q. B. 487, may control the effect of a bill, subject to same conditions as would be requisite in an ordinary contract; but the mere fact that a bill refers to a collateral writing or agreement which is conditional in its terms will not vitiate the bill in the hands of a person who has no notice of its contents: *Lindley vs. Lacey* (1864), 34 L. J. C. P. 9. (See English and American cases reviewed, *Taylor vs. Curry* (1871), 109 Massachusetts 36.

COMPUTATION OF TIME, NON-JURIDICAL DAYS AND DAYS OF GRACE.

42. Computation of Time—Last Day of Grace.—Where a bill is not payable on demand, three days, called days of grace, are, in every case, where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided, that whenever the last day of grace falls on a legal holiday or non-juridical day in the province where any such bill is payable, then the day next following, not being a legal holiday or non-juridical day in such province, shall be the last day of grace. 53 V., c. 33, s. 14. Eng. s. 14.

Under the Act non-business days are the same as legal holidays or non-juridical days (sec. 2), and are the days mentioned in sec. 43.

PAYABLE ON DEMAND.—As to when a bill is payable on demand, see sec. 23. In Canada sight bills are not payable on demand and are entitled to days of grace.

This section applies only to bills payable in Canada. Those payable elsewhere are governed as to their due date by the law of the place where they are payable. Section 160, ss. 2 (c).

Where a bill is payable by instalments, days of grace are allowed on each instalment; *Oridge vs. Sherborne*, 11 M. & W. 374 (1843).

Non-negotiable notes not payable on demand are entitled to days of grace; *Smith vs. Kendall*, 6 T. R. 123 (1794).

NOTICE OF DISHONOUR AND ACTION.—Notice of dishonour may be given at any time on the third day of grace immediately upon payment being refused by the acceptor (sec. 98), but action cannot be brought on a bill until the following day. See notes to sec. 95.

43. Non-Juridical Days.—In all matters relating to bills of exchange, the following and no other shall be observed as legal holidays or non-juridical days:

(a) **General.**—In all the Provinces of Canada:

Sundays;
New Year's Day;
Good Friday;
Easter Monday;
Victoria Day;
Dominion Day;
Labour Day;
Christmas Day;

The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign:

Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada;

The day next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the birthday of the reigning sovereign when such days respectively fall on Sunday;

(b) **Quebec.**—In the province of Quebec in addition to the said days:

The Epiphany,
The Ascension,
All Saints' Day,
Conception Day;

(c) **Provincial Proclamation.**—In any one of the provinces of Canada, any day appointed by proclamation of the Lieutenant Governor of such province for a public holiday, or for a fast or thanksgiving within the same, and any non-juridical day by virtue of a statute of such province. 53 V., c. 23, s. 14; 56 V., c. 30, s. 1; 57-58 V., c. 55, s. 2; 1 Ed. VII., c. 12, sec. 2 and 4. Cf. Eng. ss. 14 and 92.

Cf. notes to sec. 42.

44. Time of Payment.—Where a bill is payable at sight, or at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment. 53 V., c. 33, s. 14. Cf. Eng. s. 14.

45. Sight Bill.—Where a bill is payable at sight or at a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance, or for non-delivery. 53 V., c. 33, s. 14. Cf. Eng. s. 14.

A bill is payable at sight. The acceptance bears date March 1st. The bill is due March 4th.

The date is presumed to be the true date unless the contrary be proved (sec. 29). As to omission of date see sec. 30. The proper date of an acceptance after a previous refusal to accept is the date of the first presentment (sec. 37). As to date or acceptance of a bill payable at sight or after sight, see sec. 80.

A bill payable after sight is noted for non-acceptance on January 1st. It is accepted *supra* protest on January 5th. The time of payment must be calculated from January 1st (sec. 150).

46. Due Date.—Every bill which is made payable at a month or months after date becomes due on the same numbered day of the month in which it is made payable as the day on which it is dated, unless there is no such day in the month in which it is made payable, in which case it becomes due on the last day of that month, with the addition, in all cases, of the days of grace.

2. Month.—The term "month" in a bill means the calendar month. 53 V., c. 33, s. 14. Cf. Eng. s. 14.

A bill dated 31st January payable "without grace" one month after date is due February 28th. A similar note dated January 1st is due February 1st.

Bills dated 28th, 29th and 30th November, respectively, payable three months after date, all fall due on March 3rd, except in a leap year, when the first note would fall due on March 2nd.

CAPACITY AND AUTHORITY OF PARTIES.

47. Capacity of Parties—Corporations.—Capacity to incur liability as a party to a bill is co-extensive with capacity to contract: Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor or endorser, of a bill, unless it is competent to it so to do under the law for the time being in force relating to such corporation. 53 V., c. 33, s. 22. Eng. s. 22.

See notes to sec. 48.

There is no special law of capacity applicable to parties to bills and notes. The rule laid down by this section refers the

question of capacity to the general law of contracts in the province in which the transactions upon the bill take place. As to conflict of laws, see secs. 160 *et seq.*

Imperial Life Ass Co. vs. Audett, 5 D. L. R. 355.

Applicant for life insurance who signs application and premium note when drunk and who later, when sober receives the policy but raises no objection until payment of note is demanded, will be estopped from raising defence of incapacity to sign.

Union Bank vs. Cross and Everard, 5 Alta. L. R. 489.

Promissory note of corporation—signatures—directors held liable.

Toronto Brick Co. vs. Brandon, 7 O. W. N. 646.

Promissory note—Company—settlement of differences — Evidence.

Northern Elec. & Mfg. Co. vs. Kasaw Elec. and Scaborn, 29 W. L. R. 582.

The words "K. Elec. Co." followed by a dotted line at the end of which were the letters "Mgr." were placed on a promissory note by means of a rubber stamp. Just above the letters "Mgr." appeared the name "C. A. Kasow" in handwriting.

Held, that the note was that of the Company, and that "C. A. Kasow" was not liable thereon on the ground that the rubber stamp, coupled with the handwritten signature, constituted the signature of the Company to the note.

Magrath vs. Cook, 8 A. L. R. 318; 30 W. L. R. 701.

Due negotiation of a note payable to a company is not proved by simply showing that it is indorsed by an officer who has general authority to indorse, if no indorsation has passed to the Company.

Davis vs. Reynolds (1909), 2 Sask. R. 221.

The plaintiff, the brother of a lunatic, sold certain property of such lunatic to defendant, taking a promissory note in payment expressed to be payable to plaintiff for the lunatic. The note being dishonoured, plaintiff sued to recover, and the action was dismissed. The plaintiff was then appointed guardian of the estate and brought a new action as guardian, but did not notify the defendant of his appointment or ratify the transactions occurring prior to his appointment.

Held, that if the note when given was not valid, the plaintiff could not, upon being appointed guardian, recover upon it, in any event not unless he had ratified the sale and notified the defendant of such ratification and of his appointment.

48. Effect of Disability on Holder.—Where a bill is drawn or endorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto. 53 V., c. 33, s. 22. Eng. s. 22.

Questions of capacity are determined according to the laws in force in each Province and, when these conflict, are governed in Quebec according to the law of the domicile of the contracting party (C. C. Art. 6). The law of the other provinces is not settled. In the United States the law of the place of the contract is generally followed (Story on Conflict of Laws, s. 102). In England capacity is perhaps determined according to the *lex domicilii* of the contract-

ing party (Chalmers, p. 61, citing *Sottomayers vs. De Barros* (1877), 3 P. D. 1, at p. 5; C. A. & Westlake, 3rd ed., p. 44).

Banque de St. Jean vs. Molleur, 46 Que. S. C. 34.

When a bank discounts the note of a married woman signed by her husband without authority, and she deposits the proceeds to her credit, and then gives a power of attorney to her husband to manage her affairs, and leaves the deposit under his control, the bank can afterwards recover from her the amount of the promissory note, even if the husband has appropriated the amount to his own use.

Park vs. Pullisky, 16 W. L. R. 475 (Alta.).

The plaintiffs sued, as holders in due course, on a note made by the defendants, fifteen in number, two of whom were infants. The note was on its face a joint and several promise to pay, though plaintiffs alleged only a joint liability. Plaintiffs were allowed to amend. It was held that though two of the makers were infants, the other makers were liable; that the plaintiff's failure to show that all the defendants signed the note did not preclude the plaintiffs from recovering from those shewn to have signed it; that upon the evidence adduced, the plaintiffs were holders in due course.

Capacity to incur liability must be distinguished from (a) capacity to enforce rights; (b) capacity to transfer; and (c) capacity to contract on behalf of another as a person who cannot himself be held liable may be able to bind others, or to make a legal transfer or to act as agent when duly authorized.

The incapacity of one or more parties to a bill in no way diminishes the liability of the other parties thereto: *Cf. Grey vs. Cooper* (1872), 3 Dougl. 65. Thus the acceptor cannot set up the incapacity of the drawer, section 128 (b), the drawer cannot set up the incapacity of the acceptor or payee, nor can the indorser set up the incapacity of the drawer or a previous indorser (section 130).

The principal classes without full capacity to contract are:—

(a) *Natural incapables*.—Those persons who, from natural infirmity, are entirely incapable of efficiently looking after their own interests, viz.: idiots and lunatics.

(b) *Temporary incapables*.—This class includes, minors, drunken persons and those whose mental faculties are impaired for the time being on account of age, accident or sickness.

(c) *Artificial incapables*.—Those persons who, though perfectly able to protect their own interests, are forbidden by some special law from entering into contracts. This class includes persons civilly dead, non-trading corporations and married women whose domicile is in the Province of Quebec.

Minors.—No person in Canada under the age of 21 years can incur liability on a bill of exchange or note except under the law of the Province of Quebec, which allows minors emancipated by marriage or by the Court to sign bills and notes in the performance of all acts of pure administration (C. C. Arts. 314-322), and minors engaged in trade or business to bind themselves by bills and notes relating to such trade or business (Art. 323), *City Bank vs. Lafleur*, 20 L. C. J. 131, but a minor domiciled and engaged in business in Ontario cannot bind himself by a note payable in Quebec, the law of Ontario governing as to his capacity: *Jones vs. Dickinson*, Q. R., 7 S. C. 313 (1895). A minor is not bound on a bill or note given by him for necessities, although he may be liable on the consideration: *Ex parte Marquette Re Soltykoff* (1891), 1 Q. B.

313, C. A., but the action cannot be taken on such consideration until after the due date of the note. If an adult person becomes acceptor of a bill, the mere fact that it was drawn and dated while he was under age will not be a good defence. *Chalmers* gives the following illustrations as to the liability of minors (p. 62):

(a) B., an infant, within three months of attaining his majority, accepts a bill payable six months after date. He ratifies the transaction on attaining the majority, and the bill is negotiated. B. is not liable on his acceptance; *Ex parte Kibble* (1875) L. R. 10 Ch. 373.

(b) B., after attaining his majority, accepts a bill to pay a debt contracted before his majority. The bill is indorsed to a holder in due course. The holder can sue B.: *Belfast Banking Co. vs. Doherty* (1870) 4 Ir. L. R. Q. B. D. 124.

(c) B., after attaining his majority, accepts a bill to compromise a joint liability on a bill which he accepted during his minority. He is not liable to a holder with notice: *Smith vs. King* (1892), 2 Q. B. 543.

If an infant be a party, jointly with an adult, to a negotiable instrument, the owner may sue the adult alone, without taking notice of the infant: *Burgess vs. Merrill*, 4 Taunt. 468.

Where an infant is partner in a firm, unless, on coming of age, he notifies the discontinuance of the partnership, he is liable for contracts made by the firm after his majority: *Good vs. Harrison*, 5 B. & Ald. 147.

Rights of Minor as Holder of Bill.—A minor may transfer, or sue, on a bill which he holds, whether he is the drawer or not, for, though he is not bound, other parties may be bound to him.

Idiots, Lunatics, etc.—In Quebec persons interdicted for imbecility, madness, insanity prodigality or drunkenness cannot bind themselves by bill or note (C. C. Art. 987). Bills and notes made by such persons when not interdicted are valid, but may be annulled if injurious to them, provided their condition was notorious or known to the other party at the same time of the execution of the instrument. (C. C. Arts. 334, 335).

In the other provinces of the Dominion the rule is that the contract of a lunatic or drunken man who, by reason of lunacy or drunkenness, is not capable of understanding the terms or forming a rational judgment of its effect upon his interest is not void but only voidable at his option, and this only if his state is known to the other party. Pollock on Contracts, p. 91 (adopted by MacLaren). See *Robertson vs. Kelly*, 2 O. R. 163 (1883); *Imperial Loan Co. vs. Stone*, 1 Q. B. 599 (1892); *Gore vs. Gibson*, 13 M. & W. 623.

Married Women.—A married woman having separate property may by bill, note or otherwise bind the separate property which she has or may acquire in all respects as if she were *feme sole*, except in the Province of Quebec, where the general rule is that a wife cannot contract without the authorization of her husband (C. C. Arts. 176, 296 and 986), *Danziger vs. Ritchie* 8 L. C. J. 103 (1864); but in the case of a note such authorization is sufficiently proved by the indorsement of the husband, *Johnson vs. Scott*, 3 L. N. 171 (1880), or by his signing a note as witness to the signature of his wife, *Kearney vs. Gervais*, R. J. Q., 3 S. C. 496. If the married woman is separate as to property by marriage contract (C. C. Art. 1422), or if she be granted by the Court a separation from bed and board (C. C. Art. 210), or even a separation as to property only (C. C. Art. 177), she may administer her own property and give

bills and notes when necessary for such administration. If she is a public trader she may bind herself without the authorization of her husband for all that relates to her commerce, *Beaubien vs. Husson*, 12 L. C. R. 47 (1862), and C. C. Art. 179; but in such a case even a holder in due course would have to clearly prove that the bill was for an obligation contracted in the course of her trade, *Banque Ville Marie vs. Mayrand*, Q. R., 10 S. C. 460 (1897) as a bill made by a married woman without authorization is not "complete and regular on the face of it" and *caveat emptor*. A woman cannot bind her separate property in any contract with or for her husband otherwise than as being common as to property (C. C. Art. 1301), neither for his debt, *Thibaudeau vs. Burke*, 20 R. L. 85 (1890), nor for his benefit, *Ricard vs. Banque Nationale*, Q. R., 3 Q. B. 611 (1893) nor as a surety for him, *Martin vs. Guyot*, M. L. R. 1 S. C. 181 (1885), nor together with him, *Leclerc vs. Ouimet*, 19 R. L. 78 (1890). She cannot even endorse a note given by her husband for necessities for their common support. *Bruneau & Barnes*, 25 L. C. J. 245 (1880), but a note made by a wife separate as to property in favor of her husband and indorsed by him for necessities purchased by her is valid without proof or express authority to her to sign the same: *Cholet vs. Duplessis*, 6 L. C. J. 81 (1862). A woman may incur a debt or become surety for a third person, with the authorization of her husband. The principles of Quebec law applying to the incapacity of married women to contract have always been held to be matters of public policy. (Girouard p. 59).

A woman who is divorced, or whose husband is civilly dead, has full power to contract.

Rights of Women as Holders of Bills and Notes.—If a married woman is the holder of a bill or note she may sue on it in her own name except in Quebec, where the husband alone can collect and sue upon it, if there be community of property (C. C. Art. 1298). If the wife is separate as to property, it forms part of her separate estate, but she cannot sue upon it without the authorization of her husband (C. C. Art. 176), nor can she validly pass the authority in a bill payable to her order without such authorization, except as against an acceptor, drawer or indorser, who is precluded from denying it under sections 128 and 130 (MacLaren). If the bill or note be given to a married woman, *marchande publique*, in the course of her trade, she may indorse it alone, but a suit for its recovery must be taken in her name, assisted by her husband (C. C. Art. 176).

Corporations.—Those corporations can become parties to notes and bills which are given special authority to do so by their charters or by the general laws by which they are governed. Also when it is absolutely necessary to enable them to carry on their business or attain the objects of their creation. In the case of a trading corporation the fact of incorporation for the purpose of trade would give capacity. In the case of non-trading corporations, the power must be expressly given, or there must be terms in the charter wide enough to include it (Chalmers, p. 64). The bill of a company lacking capacity is, as regards the company, incurably bad, for a contract *ultra vires* of a corporation cannot be ratified. The capacity of a company ceases when a resolution to wind it up has been passed.

Companies incorporated by Letters Patent of the Dominion or Provinces of Nova Scotia and British Columbia are required to add the word "limited" after the name on every bill, note or cheque, and if they fail to do so are liable to a penalty.

As to the form of bills of corporations, see sec. 5. Sec. 47 relates only to capacity. Cf. sec. 52.

OTHER INCAPABLE PERSONS.—Persons civilly dead have no capacity to contract. These include persons in the Province of Quebec who take solemn and perpetual vows in a religious community recognized at the time of the cession of Canada to England, and subsequently approved (Art. 34 C. C.).

49. Forgery—Estoppel—Ratification—Recovery of Amount paid on a Forged Cheque.—Subject to the provisions of this Act, where a signature on a bill is forged, or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. Provided that,—

(a) Nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery;

(b) if a cheque, payable to order, is paid by the drawee upon a forged endorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, nor any defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery:

2. Default of Notice.—In case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights. 53 V., c. 33, s. 24. (Cf. Eng. ss. 24 and 60.

A bill held under a forged signature must be distinguished from a bill with genuine signatures which has been fraudulently altered (sec. 145), though such alteration may amount to the crime of forgery, and must also be distinguished from a bill, with genuine signatures, in which material omissions have been filled up (sec. 31).

McLarty vs. Dixon, 7 O. W. N. 347.

Note—joint and several makers—denial of signatures—allegations of fraud—effect of one maker being relieved.

Kelly vs. C.P.R., 32 W. L. R. 891; 25 D. L. R. 79.

There can be no recovery for the amount of wages represented by a cheque which was lost by the payee and later came into the possession of a bank upon a forged indorsement, where for the protection of the maker the payee is unable to deliver possession of the cheque.

Quebec Bank vs. Frechette, Q. R., 20 K. B. 558.

The payment of a forged note does not give rise to a presumption against the person who has made such payment without having seen the note, (a) if he has reason to believe that a genuine note for a similar amount may be in circulation, and (b) if he makes the forgery known immediately after having discovered it. There is no want of diligence on his part if before denouncing the forgery he waits to establish the fact *de visu*.

SUBJECT TO THE PROVISIONS OF THIS ACT.—See sec. 50 as to recovery of amount paid on forged endorsement in good faith and in the ordinary course of business, sec. 173 as to protection of bank and drawer, and sec. 175 as to protection of collecting bank, where cheque is crossed. See also sec. 21 and notes as to fictitious or non-existing payee, and sec. 26 as to fictitious drawee.

Forgery is the making of a false document knowing it to be false, with the intention that he shall in any way be used or acted upon as genuine to the prejudice of any one, and any person committing this crime is liable to imprisonment for life. The following acts have been decided to amount to forgery if done with fraudulent intent:—(1) The writing by one man the name of another; (2) writing the name of a fictitious person; (3) writing a man's own name with intent that it should pass for another's; (4) filling up a blank cheque with an unauthorized sum; (5) obliterating, adding to, or altering the crossing of any cheque; (6) altering a bill, note or cheque, whether by addition, subtraction, or substitution; (7) writing a bill or note over a genuine signature, not given for that purpose. Where several join in a forgery, each forges the whole instrument. The following acts do not amount to forgery: (a) writing words amounting to a bill or note over the signature of another, purposely given; (b) drawing a bill upon a person with false addition or description to that person's name; and (c) writing another's name with or without the words "per procuration" under a mistaken belief of having authority.

A forgery cannot be ratified, *Merchants Bank vs. Lucas*, 18 S. C. Can. 704, but a person whose signature has been forged may by his conduct be estopped from denying its genuineness to an innocent holder: *Union Bank vs. Farnsworth*, 19 N. S. 82 (1882); *Scott vs. Bank of New Brunswick*, 31 N. B. 21 (1891) as to when the fact of becoming a party is an estoppel from setting up that the signatures of other parties thereto are forged or unauthorized. See as to drawer, section 130 (1) maker of note, section 185 (b); indorser, section 130 (2); acceptor, section 128; acceptor for honor, section 130; fictitious payee, section 21 (5); fictitious drawee, section 26.

Shaw vs. Connell et al (1909), 7 Eastern L. R. 165. (Supreme Court, N.B.).

Action by plaintiffs (respondents) as executors of estate of F. to recover the amount due on a promissory note made by one G. in favor of W. and endorsed by W. and the defendants Shaw (appellant). The note is dated June 11, 1907, and is for \$175. Plea that G. had forged Shaw's name, the only question involved is whether or not this case is within the principle laid down in *Ewing vs. Dominion Bank*, 35 S. C. R. 133. The note fell due on Monday, July 15, 1907, when a notice of dishonour was given. This action was commenced on August 14, 1907, or rather the summons is so dated, but it was not issued until October 7. The defendant did not repudiate his signature to the plaintiffs until November 26th. Grant, the maker of the note, who is said to have forged the endorsement, was ill on the 26th of November, when the plaintiffs first got notice of the forgery and he continued ill until December 12 when he died.

Appeal allowed. There is no evidence that plaintiffs have been prejudiced by defendant's silence. Defendants not estopped from denying signature

Meyers vs. Crown Bank, 13 O. W. R. 533.

Action to recover \$600 for alleged conversion of cheque drawn by it, upon defendants, the Imperial Bank, payable to order of plaintiff by the name of "Mrs. B. Cohen," plaintiff on the date of the cheque being the widow of B. Cohen. She claimed the cheque was stolen from her, and that the endorsement "B. Cohen" was a forgery. The trial judge gave judgment for plaintiff. An appeal was dismissed as to defendant, the Crown Bank, but allowed as to the Imperial Bank, the latter not being a joint for feisor.

Thibideaux vs. Young (1910), 8 Eastern L. R. 227.

Action by plaintiff against defendant as indorser of certain promissory notes. The plaintiffs have failed to prove the hand-writing of the defendant, and it appears that the signatures are forgeries made by the son. *Ewing vs. Dominion Bank*, 35 S. C. R. 133, invoked by plaintiff, and urged that defendant was estopped from denying the indorsement because after receiving notice of dishonour, and certain letters written to him by plaintiff's solicitor trying to collect these notes, he kept silent and the plaintiffs were prejudiced.

Held, that there was no prejudice and no remedy lost, because the maker was insolvent when the notices were alleged to have been given, and thereafter. Further, the defendant was an old man, 88 years old, a farmer, who could not read writing very well, and who thought that the one letter he received related to another matter in which some years before he had been a surety. The defendant not stopped from denying his signature. Action dismissed with costs.

The King vs. Ead (1809, 43 N. S. R., p. 53 (Court of Appeal).

Forgery of note.

Simon vs. Sinclair, 17 Man. R. 389.

A person whose indorsement on a promissory note has been forged is not estopped from denying his signature by the fact that he had allowed judgment to go against him by default in a previous action by the same plaintiff on an indorsement of his name on a prior promissory note forged by the same person, although the former negotiated the second note after such judgment.

Ethier vs. Lebelle, 33 Que. S. C. 39.

(1) The denial of his signature to a promissory note, made on oath by a defendant under Art. 208 C. P., casts upon the plaintiff the onus of proving it, which he must do by positive evidence, as for any other matter of fact. The unsupported opinion of experts will not avail against the testimony of the party himself, especially when circumstances lend probability to his denial.

(2) A party who is not clearly proved to have known of the existence of his forged signature to a note, is not estopped on the ground of neglectful standing by from setting up the forgery against the holder.

Connell vs. Shaw, 39 N. B. R. 267.

On July 15, 1907, defendant received notice of dishonour of a note purporting to be endorsed by him and on October 7 this action was begun against him on the note. On November 26 defendant notified the plaintiff that his endorsement was forged by G. the maker. G. died on December 12 following. There was a genuine endorsement on the note by W. Co. and W. Co. was solvent:—

Held, that the defendant was not estopped from denying his signature as the plaintiff had his remedy against W. Co. and against G.'s estate, and the loss of costs in this action was not such damage as would ground an estoppel.

Ewing vs. Dominion Bank, 35 S. C. R. 133, distinguished.

Kalmet vs. Keiser (1910), 13 W. L. R. 94, Alberta. (Court of Appeals).

The plaintiff sued the defendant for \$2,000 said to have been lent, and produced two promissory notes for \$1,000 each, said to have been written and signed by the defendant. The notes were signed "Alec. Keiser," but the defendant's name was "John Keiser." The defendant denied the signatures and swore that he never saw the plaintiff till the plaintiff endeavoured to collect the money. The trial judge—there was no jury—believed the plaintiff's, evidence, which was corroborated to some slight extent, and was of opinion, from a comparison made by himself of the signatures to the notes with a signature made by the defendant in the witness-box, that the former were written by the defendant. He therefore gave judgment for the plaintiff:—

Held, Beck, J. dissenting, that the Court could not, in these circumstances, reverse the judgment of the trial judge, nor grant a new trial.

Per Beck, J., that in the absence of any expert evidence as to handwriting, the trial judge was wrong in his finding of the fact of the defendant's signature to the notes, and that, in any case, in the circumstances disclosed by the evidence, the trial was unsatisfactory because no such expert evidence was given; and there should be a new trial.

A clerk in one of the departments of the Dominion Government forged several cheques upon the Bank account kept by the department with the defendants, in the manner set out in the judgment, and deposited the forged cheques to his own credit with other banks (third parties). The cheques went through the clearing house, and were paid by the defendants. The forgeries were not discovered for some months; the clerk who executed them was the person intrusted with the duty of checking the bank account and examining the pass book. In an action on behalf of the Crown to recover the amount of the forged cheques, which had been charged by the defendants against the department's account, the defendants contended that the right to recover was barred by the omission or neglect by officers of the Government of duties which the ordinary customer owes to the bank:—*Held*, upon the evidence, that there was no negligence or carelessness on the part of the Crown officers in the circumstances preceding the forgeries which conduced to their commission. 2. That there is no contracted obligation on the part of the banker's customer to examine his pass-book; nor in this case was the passing of the book to and fro evidence of a stated and settled account, for the account was a "letter of credit" account, and the settlements between the Crown and the defendants were made by means of reimbursement cheques, pursuant to sec. 58 of the Audit Act, and the reimbursement cheques accepted by the defendant did not cover the forgeries. 3. But, if there was a breach of duty or negligence or omission, it would not avail the defendants, for the Crown is not bound by esoppel, nor responsible for the negligence or laches of its servants. 4. The claim of the defendants against the other banks with which the forged cheques were deposited was based upon liability as indorsers, or upon warranty or representation that the cheques were genuine, or upon payment

and receipt of the proceeds of the forgeries under mistake of fact:—*Held*, upon the evidence, that the third party banks were not indorsers, and that there was no implication of warranty or representation upon which a claim for indemnity could be founded. 5. The rules as to notice established in regard to genuine bills and notes are inapplicable to the case of mere forgeries. 6. The defendants were never acceptors of any of the cheques within the meaning of sec. 128 of the Canadian Bills of Exchange Act. 7. A banker does not owe to the holder of a cheque the duty of knowing his customer's signature, *Imperial Bank of Canada, vs. Bank of Hamilton* (1903), A. C. 49, applied and followed. 8. But upon the ground of estoppel arising from the payment by the defendants of the forged cheques and the change in position of the third parties which ensued, the defendants were not entitled to recover against the third parties. 9. And apart from the estoppel, the rule that when one of the two innocent persons must suffer by the act of a third, he who has enabled such third person to occasion the loss must sustain it, afforded the parties a defence for, though they had credited the forger's accounts with the amounts of the forged cheques before they were presented for payment, that mistake would have been innocuous to them, had it not been for the subsequent mistake of the defendants in honouring those cheques; and this act of the defendants was the proximate cause which enabled the forger to reap the benefit of his frauds.

Rex vs. Bank of Montreal, 10 O. L. 177, Anglin J.; affirmed, 11 O. L. R. 595, 38 S. C. R. 258.

In *Dominion Bank vs. Ewing*, 1904, 35 S. C. R. 133, the bank on August 15th, 1900, by letter, informed the ostensible makers of a promissory note that it had that day discounted the note for the payees. The makers' name had been forged. They, however, did not reply or inform the bank of the forgery until December 10th, 1900, having in the meanwhile been corresponding with the forger, urging him to settle the matter. A large part of the proceeds of the discount was not paid out by the bank until after the time when they could have had notice from the defendants that the note was a forgery. *Held*:—That the defendant's silence coupled with the resulting damage, estopped them from denying their signature, and that they were liable for the full amount of the note.

The principle of law that money paid under mistake of *fact* may be recovered regulates the dealings with forged instruments. If a person is induced to discount a bill by a signature which he afterwards discovers to be forged, whether he takes through the signature or independently of it, that is, whether he has a good title to the bill or not, he may at once recover the money from the person who brought the bill for discount. So, if such a bill was given for the price of goods or other consideration, the receiver might, on discovering the forgery, at once sue on the consideration.

UNLESS HE GIVES NOTICE IN WRITING.—The effect of clause (b) of the proviso is that if a cheque payable to order is paid by the drawee upon a forged endorsement, there is a special period of limitation applicable to the claim or defence of the drawer against the drawee in respect of the payment made, namely, one year after the drawer has acquired notice of the forgery. Until the year expires, the payment as between the drawer and drawee is invalid in accordance with the general rule that a forged document is wholly inoperative. After the year, the drawer is concluded as against the drawee.

By sub-sec. 2 the same period of limitation is made applicable

as respects every other party to the cheque or named therein who has not previously instituted proceedings for the protection of his rights.

Soc. Permanente de Construction d'Iberville vs. Longtin, 40 Que., S. C. 55.

When a negotiable note with a forged indorsement is discounted notice of dishonour given to the apparent indorser does not impose on him the duty of making inquiries, disclosing the crime and denouncing the forger. And this obligation does not arise from the provisions of sec. 49 of the Bills of Exchange Act (1906). Therefore, one who receives a notice under the above circumstances and takes no steps to prevent prejudice resulting from the crime is not guilty of a fault which makes him liable to an action. Cf. *Ewing vs. Dominion Bank*, 35 Can. S. C. R. 133.

50. Recovery of Amount paid on Forged Endorsement.—If a bill bearing a forged or unauthorized endorsement is paid in good faith and in the ordinary course of business, by or on behalf of the drawee or acceptor, the person by whom or on whose behalf such payment is made shall have the right to recover the amount so paid from the person to whom it was so paid or from any endorser who has endorsed the bill subsequently to the forged or unauthorized endorsement if notice of the endorsement being a forged or unauthorized endorsement is given to each such subsequent endorser within the time and in the manner in this section mentioned.

2. Rights Over.—Any such person or endorser from whom said amount has been recovered shall have the like right of recovery against any prior endorser subsequent to the forged or unauthorized endorsement.

3. Notice of Forgery.—Such notice of the endorsement being a forged or unauthorized endorsement shall be given within a reasonable time after the person seeking to recover the amount has acquired notice that the endorsement is forged or unauthorized, and may be given or addressed under this Act. 60-61 V., c. 10, s. 1, dressed in the same way, as notice of protest or dishonour of a bill may be given or addressed under this Act. 60-61 V., c. 10, s. 1. Cf. Eng. s. 60.

Cf. notes to sec. 49.

Section 50 gives the right to recover back the amount paid from the person to whom it was paid or from any endorser subsequent to the forged or unauthorized endorsement, but it confers no right of recovery against an intermediate holder who may have transferred the bill, but who did not endorse it. The section requires notice of the forgery or want of authority to be given to each endorser subsequent to the endorsement in question, and not merely to the endorser sought to be charged. The notice must be given within a reasonable time after the person seeking to recover the amount has acquired notice that the endorsement is forged or unauthorized, and may be given in the same manner as notice of protest or dishonour under the Act.

As to "reasonable time," cf. secs. 77, 86 and 166, where the same expression is used.

The section does not affect the rights or position of the drawer or endorsers prior to the forged or unauthorized endorsement, they being in no way responsible for the forgery or want of authority. As a loss must be suffered by some innocent party it is only right that it should fall upon him who by his negligence or failure to enquire was imposed upon, and who had it entirely within his power to protect himself at the time of acquiring the bill. This principle is applicable to the first endorser after the forged or unauthorized endorsement and to each subsequent endorsement. But an acceptor is in a different position. When a bill is presented for payment he has no time to verify the endorsement and usually has no means of doing so. He must pay at once or let the bill go to protest—and he is therefore required only to act in good faith and in the ordinary course of business. Falconbridge p. 439.

51. Procuration Signature.—A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only of the agent in so signing was acting within the actual limits of his authority. 53 V., c. 33, s. 25. Eng. s. 25.

A person taking a bill signed by procuration ought to exercise due caution, and it would be only reasonable prudence to require the production of the authority in pursuance of which the bill is signed.

The section provides for the case of an instrument which shows on its face that it is signed by the hand of an agent. Cf. sec. 4, which provides that an instrument is sufficiently signed by a person if his signature is written thereon by some other person by or under his authority.

As to the signature of a corporation and notes signed on behalf of a corporation, see sec. 5.

As to the form of signature by an agent which is sufficient to shew that the agent is not to be personally liable, providing the authority is sufficient, see sec. 52.

If C. signs a bill by power of attorney from D., the form of signature should indicate the fact, as "D. per C.," "D. by C., atty.," "C. p. p. D." or "per proc. D. C." not "D. p. C." or "per proc. C., D." The two last forms would indicate that C. is the principal and D. the agent.

Where an agent draws, accepts, makes or indorses "per pro." the taker of such a bill or note is bound to inquire as to the extent of the agent's authority. Where an agent has authority, the abuse of it does not afford a *bona fide* holder for value. The apparent authority is the real authority: *Bryant vs. Quebec Bank* (1893), A. C. 170.

Subsequent recognition of an agent's acts is equivalent to previous authority, provided the agent, when he acted, assumed to act as agent. *Saunderson vs. Griffiths*, 5 B. & C. 909.

Authority to indorse does not include authority to draw, and *vice versa*, and neither amounts to an authority to accept. All are, however, included in a power of general agency: *Bryant vs. Quebec Bank* (1893), A. C. 179. A power of attorney to draw, indorse or accept bills does not authorize the agent to become a party to accommodation paper, *German National Bank vs. Studley*, 1 Mo. App.

260 (1876), but the principal would be liable to a holder in due course: *Edwards vs. Thomas*, 66 Mo., 469 (1877).

A power of attorney to administer the affairs of the principal confers no authority to indorse a note for the accommodation of the maker even when such note is only a renewal of another already indorsed by the principal. The indorser of a note is entitled to the benefit of time given to the maker.

Molsons' Bank vs. Cooke, Q. R. J., 27 S. C., 130.

A local manager of an incorporated company, who was authorized only to indorse cheques for deposit with the Bank of British Columbia, indorsed and cashed at the Bank of Montreal cheques payable to the company drawn on that bank:—*Held*, the Bank of Montreal was liable to the company for the amount of the cheques so cashed: *Hinton Electric Co. vs. Bank of Montreal*, 9 B. C. R., 545.

An agent appointed to wind up the business of a firm has not authority to accept bills drawn on the firm: *Odell vs. Cormack*, 19 Q. B. D. 223 (1887).

A person who, without authority, signs the name of another to a bill, either simply or by procuration signatures, is not liable on the instrument: *Pothill vs. Walter* (1832), 3 B. & Ad. 114. He would, however, be liable for any loss arising from the false representation: *West London Commercial Bank vs. Kitson*, 13 Q. B. D. 362 (1884). If the alleged principal be a fictitious or non-existing person, the signer is liable on the bill: *Cf. Kelner vs. Baxter* (1866), L. R., 2 C. P. 174, and guilty of forgery. See section 131.

52. Signing in Representative Capacity.—Where a person signs a bill as drawer, indorser or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon: but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability:

2. Rule for Determining Capacity.—In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. 53 V., c. 33, s. 26. Eng. s. 26.

Lerner vs. Dawson, 11 W. L. R. 677.

Action to recover amount due on a promissory note. Judgment for plaintiff. The note being made payable to a trustee does not make it the duty of the transferee to investigate the trust.

Held, that there was consideration, the shares for which note given having been allotted.

As to the sufficiency of the authority of an agent to sign a bill on behalf of a principal, see notes to secs. 4, 5 and 51. Sec. 52 deals only with the question whether the form of the signature is such as to render the principal and not the agent liable.

See sec. 132 as to signing a bill in a trade or assumed name or in the name of a firm.

Where a person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability (sec. 61).

In considering the question raised by this section, one must not overlook the distinction between bills of exchange and promissory notes. A bill of exchange is drawn on the intended acceptor in a personal character, and if he accepts, he must do so in that character or not at all. The acceptance of a bill is the signification by the *drawee* of his assent to the order of the drawer (sec. 35). This distinction explains many of the cases in which the principal has been held not liable on a bill, as not being the drawee, although otherwise the bill has been sufficiently signed for him or on his behalf by an agent.

The principle is that the terms, agent, manager, etc., attached to a signature are regarded a mere *designatio personae*, and unless the signer sets forth clearly that he subscribes it for another he is liable: *Leadbitter vs. Farrow* (1816), 5 M. & S. at p. 349.

As to liability of agent signing his principal's name without authority, see note to last section.

Binder vs. Mahon, 1 D. L. R. 924.

NOTE. Equity attaching to, in hands of holder acquiring after maturity. Renewals.

By section 61 (2), a representative who is compelled to indorse may do so in such terms as to negative personal liability.

The case of an executor or administrator often gives rise to difficulty. Where an executor merely winds up a transaction commenced by the testator it is right that he should be able to protect himself from personal liability, but where he carries on the business and engages in fresh transactions it is clear that the fact that he is an executor will not enable him to carry it on as a limited liability concern (*Chalmers*, p. 79).

Authority to execute and negotiate bills and notes in the name of the principal will be implied from the appointment to a particular clerkship or office where the customary duties are to execute and negotiate bills in the name of the principal.

Where a principal has repeatedly recognized or ratified the act of the agent by payment of bills or notes, or in any other way, an implied authority will be presumed or, at least the principle will be estopped in the future from denying the authority of the agent.

Toronto Club vs. Dominion Bank; Toronto Club vs. Imperial Bank; Toronto Club vs. Imperial Trusts Co., 25 O. L. R. 330 (C. A.).

Secretary of club collected certain dues by cheques to the order of the club, endorsed them as was his custom in name of club, secured cash for them and retained it.

Held, that he had general authority from the Club to endorse cheques, and the defendants not liable for his conversion of them.

He similarly endorsed other cheques of members and deposited them to his credit with the Imperial Trusts Co., his banker, drew out the amounts deposited and dishonestly retained them, restoring to the Club, however, a portion by drawing five cheques upon the trust company and depositing them to the club's credit at its own bankers.

Held, the trust company was negligent in receiving these cheques, plainly the property of the club, and placing them to the secretary's credit in his own account. The trust company was privy to his breach of trust and accountable to the club.

Union Bank of Canada vs. Cross, 2 Alta. R. p. 3.

A promissory note signed with the name of an incorporated company, followed by the signatures of the various persons, with

the description "Dir." or "Mgr.", is the promissory note of the company and not of the persons so signing.

Crane vs. Lavoie, 22 Man. L. R. 330.

Where a note that was void as to its purported maker, a non-existent company, began "we promise" and was signed by two persons who added the words "president" and "manager" to their respective signatures, the signers were held individually liable under this section.

CONSIDERATION.

53. Valuable—Sufficiency—Antecedent Debt.—Valuable consideration or a bill may be constituted by,—

- (a) any consideration sufficient to support a simple contract;
- (b) an antecedent debt or liability;

2. **Form of Bill.**—Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time. 53 V., c. 33, s. 27. Eng. s. 27.

"Value" in the Act means valuable consideration (sec. 2).

The subject of contract is within the jurisdiction of the local legislatures, and where Provincial laws conflict as to contracts on bills and notes, the principles governing conflict of laws will be applied.

It was held by the Privy Council, in the case of *McGreevy vs. Russell*, 56 L. T. N. E. 501 (1887), that there is no difference between French (Quebec) law and English law as to the necessity for a valuable consideration for the validity of a contract.

Bank of B. N. A. vs. McComb, 21 Man. R. 58, W. L. R. 94.

The mere existence of a liability of a customer to a bank on a promissory note not yet due is not a sufficient consideration, under section 53 of the Act, for the transfer by the customer to the bank of the promissory note of a third party as collateral security so as to constitute the bank the holder in due course of such note or to give the bank a better title to it than the customer had as against the maker, unless there is evidence that the note was transferred pursuant to a previous agreement to give security.

When a note has been given in respect of an indebtedness incurred, that indebtedness will not furnish a consideration for another simple contract made during the currency of the note, the original consideration having been merged in the note.

See this case cited under sec. 58.

Sovereign Bank vs. McIntyre (1909), 14 O. W. R. 1294, 1 O. W. N. 254. (Judgment of Magee, J., at trial and of Divisional Court (1909), 13 O. W. R. 509, set aside).

Held, total failure of consideration where evidence that stock for which note was given never was and never could have been delivered to defendant.

A consideration sufficient to support a simple contract may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other: *Curry vs. Misa*, L. R. 10 Ex. 162 (1875). The payment of money, however small the sum, and the sale of goods, however low the value—if there is an absence of fraud—will enable the holder to recover against prior

parties. The Courts do not enquire into the adequacy of a *bona fide* consideration. *Jones vs. Gordon* (1877), 2 App. Cas. 616 H. L.; but inadequacy of consideration may be evidence of bad faith or fraud: *Simon vs. Cridland* (1862), 5 L. T. N. S. 524. A cross acceptance, *Burden vs. Benton* (1847), 9 Q. B. 843; a forbearance of the debt of a third person, *Crears vs. Hunter* (1887), 19 Q. B. D. 241; the compromise of a disputed claim, although it afterwards appears that the claim was wholly unfounded, *Callisher vs. Bischoffsheim*, L. R., 5 Q. B. 449 (1870); a promise to give up a bill thought to be invalid, *Smith vs. Smith*, 13 C. B. N. S. 418 (1863); a debt barred by the Statute of Limitations, *Wright vs. Wright*, 6 Ont. P. R. 295 (1876); the obligation on the part of a thief to restore stolen property, *London & County Bank vs. River Plate Bank* (1888), 21 Q. B. D. 535 C. A.; the obligation to recompense the father for injury done to his minor son, *Hubley vs. Morash*, 27 N. S. 281 (1894), constitute value; but the signing of a deed of composition, *Bury vs. Nowell*, Q. R., 10 S. C. 537 (1897); a debt represented to be due though not really due, *Southall vs. Rigg*, 11 C. B. 481 (1851); the giving up of a void note, *Coward vs. Hughes*, 1 K. & J. 443 (1855); a voluntary gift of money, *Hill vs. Wilson*, L. R., 8 Ch. 894 (1873); buying the supposed patent rights to what proves not to be a new and useful invention, *Almour vs. Cable*, Ramsay A. C. 87 (1886), do not constitute value.

Sovereign Bank vs. Clarkson, 3 O. W. N. 237.

Hamilton vs. Harvey, 20 D. L. R. 951.

Defences—counterclaim based on fraud—adding parties—note. *Snider vs. Snider*, 7 O. W. N. 445.

Promissory notes—failure of consideration—legacy—will—attempted cancellation of note in writing—Bills of Exchange Act—testamentary intention—evidence—a foreign domicile—forum—costs.

Magrath vs. Cook, 8 A. L. R. 318; 30 W. L. R. 701.

Due negotiation of a note payable to a company is not proved by simply shewing that it is indorsed by an officer who has general authority to indorse, if no consideration has passed to the company.

Canadian Bank of Commerce vs. Barlow, 31 W. L. R. 664.

Where a promissory note is by the payee deposited with a bank together with the usual letter of hypothecation as collateral security to a note made by the payee to the bank—the latter note not having matured at the time of such deposit—and the latter note matures before the due date of the collateral note and is renewed by the bank—the bank at that time not having notice of a defect in the collateral note—the renewal is sufficient consideration for the collateral note.

Union Bank vs. Dodds, 22 D. L. R. 545; 31 W. L. R. 521.

The forbearance of a creditor under an arrangement by which the debtor was given a reasonable time to realize on securities owned by him in order to pay the debt, is a sufficient consideration to support an accommodation note given by a third party directly to the creditor as collateral security.

Harris vs. Wilson, 31 W. L. R. 825; 23 D. L. R. 86.

A promissory note given on account of an anticipated threshing bill, on which no liability was in fact incurred, is unenforceable for failure of consideration even in the hands of a transferee for value who acquired it with knowledge of its true conditions.

Calhoun vs. Williams, 17 D. L. R. 68; 28 W. L. R. 236.

In determining whether or not a note was given only as accommodation, the inconsistency of the conduct of the party denying that such was the case will be considered in conjunction with the indefiniteness and improbability of the agreement which he sets up in answer.

Tyrell vs. Murphy, 30 O. L. R. 235; 18 D. L. R. 327.

The maker of a note cannot set up the want of consideration for the assignment of a note to the person seeking to enforce it, since the former is a stranger to the transaction.

Kaulbach vs. Begin, 49 N. S. R. 66; 21 D. L. R. 77.

An executor suing upon promissory notes given by the defendant to the testator under the latter's executory agreement for the transfer to the maker of the note of certain shares in a vessel so soon as the note should be paid, cannot recover on the note if the testator had treated the agreement as non-existent, made no tender or offer of the shares, made no demand under the notes, and had treated the defendant as having no interest in the vessel by selling the shares in question without referring to the defendant.

Graham vs. Brodeur Co., 47 Que. S. C. 56.

A defence to an action based upon cheques which alleges that the cheques were given for the price of goods part only of which had been delivered, which apart from the remainder of the goods ordered were useless to the purchaser and the failure to deliver the remainder caused to the latter damages to an amount greater than the sum claimed is not a demand in compensation but a plea of failure of consideration.

Herrington vs. Carey, 8 O. W. N. 451; 9 O. W. N. 75.

Illegal consideration—promissory note—accommodation makers.

Bills of Exchange. Action to recover on endorsement. Sale of stock. Third Party Issue.

A fluctuating balance may form a consideration for a bill: *Pease vs. Hirst*, 10 B. & C. 122.

A bill must not be expressed to be given for a future consideration, for this would render it conditional and invalid, 16 M. & W. 146, but notes given to an insurance company for premiums subsequently earned are valid: *Wood vs. Shaw*, 3 L. C. J. 169 (1858).

Pettit vs. Barton, 4 O. W. N. 200.

The defence was that the note was given as evidence of debt and for accommodation of plaintiff. Onus, failing to prove facts. Absence of consideration.

Crauc vs. Lavoie, 4 D. L. R. 175, 22 Man. L. R. 330.

Delay in enforcing a claim against co-partners and permitting them to transfer the assets of the firm to a company formed by them to take over their business, is a sufficient consideration for a promissory note to hold the makers liable, where the note was void as to the company purporting to be its maker, which was executed by the co-partners as president and manager thereof.

Such makers warrant that the company actually exists.

McClelland vs. Whynot et al. (1910) 8 East. L. R. 307 (N.S.)

The plaintiff sued defendants on a promissory note, being part of the consideration for a sale of a horse by plaintiff to defendant. The making of the note and its dishonour is not denied, but a counterclaim is set up that the representations made by the plaintiff with reference to the age of the horse were false and were made

fraudulently by the plaintiff to induce the defendant to buy the horse.

Held, there was no misrepresentation or warranty by plaintiff. Counterclaim dismissed. Judgment for plaintiff.

See also *Kaulbach vs. Morach*, 8 East, L. R. 440 (N. S.).

Merchants Bank of Canada vs. Thompson, 21 O. W. R. 740. 3 D. L. R. 577.

A note is given in payment of a premium upon the maker's admission into a partnership with the payee, which is actually formed, though no term is fixed.

The subsequent dissolution of the partnership or the wrongful expulsion therefrom of the maker of the note, does not involve a total failure of consideration for the note so as to make it unenforceable in the hands of either the payee or of a holder. The maker may be entitled, however, to a return of a proportion of his premium from the payee. See authorities cited.

Tew vs. O'Hearn, 3 D. L. R. 446, 3 O. W. N. 1116.

A note is given for shop fixtures purchased from the assignee of a tenant. The lease does not clearly entitle the landlord to the fixtures at the expiration of the lease. It appears, however, that the landlord could obtain reformation of the lease so as to entitle him. There is a failure of consideration for the note. Even though no claim for reformation has been made by the landlord.

Kinzie vs. Harper, 15 O. L. R. 582 (D. C.).

See sect. 142.

Bank of Nova Scotia vs. Harvey, 8 D. L. R. 476.

An overdraft in a depositor's bank account is a sufficient consideration to constitute the bank a "*bona fide* purchaser without notice" of notes payable to its customer and transferred by the latter to the bank as collateral security for such overdraft.

Power vs. Power (1909), 43 N. S. R. 412. (Court of Appeal.)

Consideration for a note afforded by the fact that it was given as part of a family settlement or arrangement.

54. Holder for Value.—Where value has, at any time, been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

2. In Case of Lien.—Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien. 53 V., c. 33, s. 27. Eng. s. 27.

HOLDER FOR VALUE.—"Holder" is defined by sec. 2 and "holder in due course" by sec. 56. The latter must take the bill for value, but a holder for value may or may not be a holder in due course.

The holder of a bill who receives it from a holder for value but does not himself give value for it, has all the rights of a holder for value against all parties to the bill except the person from whom he received it. The payee of a bill who holds it for value, endorses it to D. without value, e. g., by way of gift or for collection. D., as regards the drawer and acceptor, is a holder for value.

A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party

to any fraud or illegality affecting it, has all the rights of a holder in due course as regards the acceptor and all parties to the bill prior to that holder (sec. 57).

Toronto Club vs. Dominion Bank; Toronto Club vs. Imperial Bank; Toronto Club vs. Imperial Trusts (1909), 14 O. W. R., p. 261.

Members' cheques payable to club. Authority of secretary to endorse.

HOLDER HAVING A LIEN.—The person who discounts a bill is a holder for full value. The pledgee of a bill is a holder for value to the extent of the debt secured, and if he sues a third party, he sues as trustee for the pledgor, as regards the difference between the amount of the debt secured and the amount of the bill.

As to bank's lien, see Bank Act, sec. 77.

C., the holder of a bill for \$100, deposits it with D. as security for a running account. At the time the bill matures the balance is in C.'s favour, but subsequently the balance turns against him to the extent of \$50. D. is a holder for value as to \$50.

International Harvester Co. of Canada vs. Maxwell, 27 W. L. R. 41; 15 D. L. R. 654.

So-called promissory or lien notes incorporating conditional sales agreements are not promissory notes within the meaning of the Bills of Exchange Act. (*Douglas vs. Auten*, 12 D. L. R. 196, applied.)

Greenwood vs. Kirby, 24 Man. L. R. 532; 20 D. L. R. 725.

A lien note which contains, in addition to the promise to pay, the promisor's agreement to furnish additional security when demanded and which stipulates for acceleration of the due date by the promisee if he deems himself insecure, is not a negotiable promissory note within the Bills of Exchange Act, and presentment before action therein is not necessary.

Bank of Ottawa vs. Hall, 8 O. W. N. 15.

Accommodation note; Indorsement to bank as collateral security for debt of payee; Debt paid before action begun; Claim of bank to hold note for subsequent debt; Evidence; Findings of fact of trial Judge; Appeal.

Sterling Bank of Canada vs. Zuber, 32 O. L. R. 123

The defendant made a note for \$250 in favour of a customer of the bank; the note was transferred by the customer to the bank as collateral security to a draft for \$150, which was discounted by the bank for the customer, the proceeds, \$149.60, being placed to his credit. This draft was not accepted or paid. The customer had in fact no right to pledge the note, but should have given it up to the defendant:—*Held*, upon the evidence, that the note was completed by the defendant and delivered as a promissory note, and was given to the bank, before maturity, for value, without notice of any defect; and so the bank became the holder in due course, and was entitled to recover from the defendant thereon to the extent of its lien, i. e., \$149.60 and interest.

Bank of B. N. A. vs. McComb, 16 W. L. R. 204 (Man.).

A note made by M. in favour of B. was by B. indorsed to plaintiffs, B. not being indebted to plaintiff at the time they obtained possession of the note, and there being no consideration moving from the plaintiffs to B. at that time; the note was pledged to the plaintiffs, not as security for a pre-existing debt, but to be applied upon payment to the credit of B., there was not existing indebted-

ness by B. to the plaintiffs whereon action was suspended which might be a consideration.

Held, that the plaintiffs were not holders in due course, and M. was entitled, in an action against him upon the note, to raise the same defense as he would be entitled to raise if B. were suing on the note. And *held*, upon the evidence, that, as between M. and B., there was no consideration for the note, B. having obtained it by the exercise of undue influence; and the plaintiffs were therefore not entitled to succeed in their action.

Held, also, upon the evidence, that M. (the defendant) was entitled, upon his counterclaim, to a return of the moneys paid to plaintiffs under protest, when a seizure was made by the plaintiffs of M.'s chattels under a chattel mortgage given to B. as collateral security and assigned to the plaintiffs.

Merchants Bank vs. Thompson (1911), 18 O. W. R. 582, 2 O. W. N.

One, Living, gave a promissory note in purchase of an interest in a partnership with the payee. Defendant endorsed the note for accommodation of Living. Payee left the note with plaintiffs for collection. Later Living was expelled from the partnership. The note became due, but was not protested and no notice of dishonour was given defendant. After maturity the payee pledged the note with plaintiffs as collateral to his indebtedness. Plaintiffs brought action to recover. Defendant pleaded failure of consideration, lack of notice of dishonour, and that plaintiffs were holders with notice.

Boyd, C., *held* (16 O. W. R. 770, 1. O. W. N. 1015), that the plaintiffs held the note for value so far as payee was indebted to them and could recover to the extent of that amount under Bills of Exchange Act, sections 54 and 70. That there were no equities attaching to the note; That plaintiffs were trustees for payee for balance of note. Divisional Court *held*, that there was no provision in the partnership agreement for its determination and the method adopted by the payee was inapplicable to a partnership and involved an entire failure of consideration and the same rule should be applied as in *Ching vs. Jeffery* (1885), 12 A. R. 432: That the plaintiffs were mere holders of the note for collection, until after maturity, subject to any defence that might be set up against the payee; That plaintiffs took the note with notice and could not recover. Appeal allowed and action dismissed with costs, Britton, J., dissenting.

Merchants Bank of Canada vs. Thompson, 23 O. L. R. 502 (D. C.), 18 O. W. R. 582.

Failure of consideration, even after maturity, may be an equity attaching to a note.

Bentley vs. Morrison et al. (1910), 44 N. S. R., p. 476.

L. H. B. becoming insolvent made an assignment of his goods and stock in trade to F., by whom they were sold at public auction.

At the sale the goods were bought in for A. M. B., wife of L. H. B., who having obtained her husband's consent to her doing business in her own name, on March 31st, 1904, registered a declaration under the Act of her intention to carry on business under the name and style of B. & Co. and gave a power of attorney to L. H. B. to act as manager of such business.

In March, 1907, at a time when the firm of B. & Co. was in difficulties and unable to meet its liabilities, L. H. B. executed a bill of sale in his own name to defendant M. to secure the sum of \$1,700

and, at the same time, delivered to him a promissory note for the same amount payable on demand.

By agreement between the parties the bill of sale was not filed but was retained in the possession of M.'s solicitor until June, 1909, when M., purporting to act under the bill of sale, sold the goods of B. & Co. to C. for the sum of \$1,700, taking in part payment the note of C. made to B. & Co. and indorsed by B. & Co. to him. On the following day he brought action on the promissory note and recovered judgment for the amount of the note with interest and costs, and issued execution.

In the interim between the date of the giving of the bill of sale and note, B. & Co. had made payments on account and had been supplied with other goods by defendant.

In an action by plaintiff and other creditors to set aside the bill of sale and for an accounting and other relief.

Held, that the agreement between the defendant and L. H. B., under which the bill of sale was not to be recorded rendered the transfer void as against creditors.

Held (by the majority of the Court) that the promissory note given to defendant contemporaneously with the bill of sale was a continuing security upon which defendant was entitled to recover, except in so far as the indebtedness has been reduced by payments, the amount to be determined by the assignee.

Further, that the judgment recovered by defendant in his action on the note could not be attacked collaterally or in the present proceedings.

Pickup vs. Northern Bank, 18 Man. R. 65 (K. B.)

See Sec. 146.

Bank of Nova Scotia vs. Harvey, 8 D. L. R. 476.

A bank may recover on a note taken in the regular course of business as collateral, and without notice of any arrangement between maker and payee, even though as between them the consideration for the note may have failed.

Freedman vs. The Dominion Bank (1909), 37 Que. S. C. (Court of Review), 535.

When a customer hands over notes and bills to a bank for discount, and part of them only is discounted, the rest being held for collection, the bank acquires no lien on the latter for the customer's indebtedness to it.

Lockhart vs. Wilson, 39 Can. S. C. R. 541. See sec. 3.

Gorman vs. Copp, 39 N. B. R. 309.

The M. Company owed the plaintiff \$4,000 for which he held as collateral security the defendant's note for \$3,000, made for the accommodation of the company, and some other collateral. After action brought on the note the plaintiff received a dividend from the company, which had gone into liquidation, and realized on some of the other collateral, but these facts were not pleaded. Verdict having been entered for the full amount of the note:—

Held, that the plaintiff was entitled to judgment for the full amount of the note, but the amount realized upon the collateral and some portion of the dividend should be credited upon the execution.

55. Accommodation Bill.—An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or endorser,

without receiving value therefore, and for the purpose of lending his name to some other person.

Bank of Ottawa vs. Hall, 7 O. W. N. 475.

Promissory note—accommodation note—endorsement to bank as collateral security for debt of payee—debt paid before action begun—claim of bank to hold note for subsequent debt—evidence and findings of fact of trial judge.

Bank of Ottawa vs. Shillington, 9 O. W. N. 315.

Conditional signature by defendants for accommodation of unincorporated association—burden of proof—evidence—credits—interest after demand—rate of.

Pyke vs. Sovereign Bank, 24 Que. K. B. 198, affirming 14 D. L. R. 383; 24 D. L. R. 720.

A person is not relieved from liability on his accommodation cheque given to the manager of a bank to enable him to buy shares of the bank which the bank paid in good faith; nor will the manager's promise to reimburse the maker of the cheque for moneys so advanced affect such liability, where the transaction was carried on without the knowledge or authority of the bank.

David vs. Beauregard, 47 Que. S. C. 312.

The giver of security for the maker of an accommodation note cannot plead want of consideration when he made it expressly to give value to a bill of exchange which without him would not have had such value. The principal debtor for a note cannot be relieved from the obligation to pay it by offering the holder to reimburse him merely what the latter had paid.

Friedman vs. Scott, 24 Que. K. B. 21.

A note was signed by a company in favour of an accommodation payee who indorsed it and deposited it in a bank to the credit of the maker. The bank after its maturity transferred the note to the directors of the company. While it was in possession of the bank the company gave instructions for its payment out of moneys on deposit. The bank did not carry out the instructions, and the note, on request of the company, was renewed from time to time. In these circumstances, and notwithstanding the renewals, the note should be considered as paid and the indorser could not be held liable in an action by a third party, acting as prête-nom of the directors.

Evans vs. Bank of Hamilton.

Transfer to Bank as collateral security for debt of maker of note. Transactions between bank and maker. Release of note. Payment. Action to recover amount paid. Fraud and misrepresentation. Statute of limitations. Appeal. Costs.

Sovereign Bank vs. Thompson (1909), 14 O. W. R. 387.

Action on a promissory note made by defendant A., claiming to be surety for B. Plaintiff gave B. time to pay, but no binding arrangement made, plaintiff's right against A. being reserved. Judgment against both defendants.

Bank of Ottawa vs. Bradfield, 1 D. L. R. 904.

Mental condition of indorser. Undue influence of maker.

Hough vs. Kennedy, 3 Alta. R. 114.

An extension of time granted by an endorsee of a note to the payee, does not release the accommodation maker thereof. Such maker is not entitled to strict notice of dishonour, but will be re-

lieved of his obligation if he can show prejudice suffered by lack of notice.

Herbert vs. Poirier, Q. R. 40 S. C. 405.

The maker of a promissory note, payable to order, may show by parol testimony, as against the holder, that he signed the bill as an accommodation note. *Decelles vs. Samoisette* (32 L. C. J. 236), disapproved. *Tellier, J.*, dissenting.

Hatfield vs. McCrohan (1910), 15 W. L. R. 638 (Alta. L. R.)

An incorporated trading company, of which the plaintiff was president, bought from the defendant shares in another company for \$2,000. The agreement was that the defendant was to take in payment of the price promissory notes of the purchasing company, endorsed by the plaintiff. The notes were made by the company payable to the order of the defendant, and were then endorsed by the plaintiff, and afterwards by the defendant, who wrote his name (he being payee) above the plaintiff's name. The notes were discounted by the defendant, and after maturity were paid by the plaintiff. The plaintiff sued the defendant for the amount which he had paid. The plaintiff admitted that he endorsed the notes for the accommodation of the company.

Held, that oral evidence was admissible to shew the exact relationship between the parties; and that the plaintiff had, upon the facts shewn, no recourse against the defendant, although by the position of the names upon the back of the note the latter appeared to be a prior endorser.

Bank of B. N. A. vs. Hart, 2 D. L. R. 810.

The fact that the endorsement on the original note has been erased after a renewal does not result in novation or release the endorser.

2. Liability of Party.—An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. 53 V. c. 33, s. 28. Eng. s. 28.

An accommodation bill is a bill whereof the acceptor is in substance a mere surety for some other person who may or may not be a party thereto: *Cf. Oriental Financial Corp. vs. Overend* (1871), L. R. 7 Ch. 142, but where there is a running account between the drawer and the drawee, and a bill is accepted, it is not an accommodation bill, even although the account was against the drawer at the time of acceptance; *re Overend, Gurney & Co. Ex parte Swan*, L. R. 6 Eq. 356 (1868).

An accommodation bill is not issued within the meaning of section 145 of the Act until it comes into possession of some person who can sue upon it: *Engel vs. Stourton*, 5 T. L. R. 444 (1889).

Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged, section 139 (3). If accepted for the benefit of a drawer or indorser he is liable without presentment for payment, protest or notice of dishonour, section 92 (c) and (d), section 106 (c 4) and (d 3) and section 111. As to negotiation of an overdue accommodation bill, see section 70.

Conversely, an accommodation party, known to be such may avail himself of any defence arising out of the bill transaction, which the person accommodated could have set up: *Bechervaise vs. Lewis* (1872), L. R., 7 C. P. 377. He may also be released by the holder giving time to the principal, if the holder is aware of the relation between them.

Bank of B. N. A. vs. Hart, 2 D. L. R. 810.

A renewal note, endorsed by person who endorsed previous note, is altered after endorsement and without endorser's consent.

Held, the indorser is discharged on both notes.

Fraud.—A bill is affected with fraud when the issue or any subsequent negotiation of it is obtained by some misrepresentations or untrue statements intentionally made for that purpose, *McCollum vs. Church*; or when it was negotiated in breach of faith. *Lloyd vs. Howard* (1850), 15 Q. B. 995; or in fraud of third parties: *Bonisteel vs. Saylor*, 17 Ont. A. R. 505 (1800); *Jones vs. Gordon* (1877), 2 App. Cas. 616, H. L. Fraud is never presumed; it must be proved; C. C. Art. 993.

The defendant joined in a promissory note, as the payees knew, for the accommodation of his co-makers. When it became due, the latter tendered the renewal note, purporting to be signed by the defendant, which the payees accepted and gave up the original note stamped "paid." The primary debtor became insolvent and died, and the payees afterwards sued the defendant on the renewal note only in a Division Court when the defendant swore he never signed it, but, nevertheless, there was verdict and judgment for the plaintiffs. A new trial was then granted resulting in a verdict for the defendant. A further new trial then being granted, the judge, at the trial, allowed the plaintiffs to claim in the alternative upon the original note, as well as on the renewal, and to amend his claim accordingly. A verdict was then returned for the plaintiff on the original note. *Held*, that the renewal note being a forgery, so far as the defendant's signature was concerned, and the plaintiffs, therefore, having been induced by the fraud of the primary debtor to give him up the original note, the plaintiffs retained a right to recover in equity on the latter.

Matthews vs. Marsh 5 O. L. R. 540 (D. C.).

Duress—May consist in actual violence or in threats thereof; *Duncan vs. Scott* (1807), 1 Camp, 100. See also *Western Bank vs. McGill*, 32 S. C. R. 581.

Violence or Fear is a cause of nullity whether practised or produced by the party for whose benefit the contract is made or by any other person: C. C. Art. 994. *Macfarlane vs. Dewey*, 15 L. C. J. 85 (1870).

Illegal Consideration.—The consideration for a bill is illegal which is wholly or in part immoral, contrary to public policy, or forbidden by statute. Promissory notes to creditors for the balance of their claim for signing a deed of composition or discharge. *Garneau vs. Lariviere*, Q. R., 1 S. C. 419 (1892); notes given in satisfaction of a wager on an election. *Dufresne vs. Guerremont*, 5 L. C. J. 278 (1859); or as a subscription to an election fund. *Dansereau vs. St. Louis*, 18 S. C. Can. 587 (1890); or in settlement of a "bucket shop" transaction. *Dalglish vs. Bond*, M. L. R., 7 S. C. 400 (1890); or to a hotelkeeper in payment for liquor. *Benard vs. McKay*, 9 Man. 151 (1893), are void. A renewal or substitution of a new instrument for the old would not cure the defect arising from illegal consideration (MacLaren).

The test whether a bill or note be contaminated with an illegal transaction is this: "Does the plaintiff require any aid from the illegal transaction to establish his case." *Simpson vs. Bloss*, 7 Taunt 246.

Contracts with a public enemy are illegal and a bill drawn by an alien enemy on his debtor here, and indorsed to the plaintiff, a

British subject resident in the hostile country, cannot be recovered on, though the plaintiff do not sue until the return of peace and though he were resident at the time of taking the bill in a hostile country. *Willison vs. Patteson*, 7 Taunt 440. But where a British prisoner in France drew a bill of an English subject, and indorsed it to the plaintiff, then an alien enemy, it was held that after the return of peace the plaintiff might recover. *Antoine vs. Morshead*, 6 Taunt. 237. A bill drawn by a British prisoner in favor of an alien enemy cannot be enforced by the payee. Byles, 14th ed., p. 159.

In the case of *Crowder-Jones vs. Sullivan*, 9 O. L. R. 27, the plaintiff, who for several years had been housekeeper for a widower with a young daughter, was about to be married when her employer promised her, if she would continue in his service as housekeeper so long as he needed her and abandon her contemplated marriage, he would either pay her \$1,000 in cash, give her a promissory note for \$1,500, or remember her in his will. The plaintiff thereupon abandoned the marriage, and continued her service until her employer's death, which occurred four years afterwards, he, in the meantime, having given her a note for \$1,500. In an action against his administrator on the note:—*Held*, that the primary object of the agreement was the continuing in the intestate's service, the restraint of marriage being merely an incident thereto, and that, under all the circumstances, the restraint was not such an unreasonable one as could be said to be contrary to the policy of the law. Judgment of Street, J., 6 O. L. R. 708, reversed. *Crowder-Jones vs. Sullivan*, 9 O. L. R. 27. C. A.

There is not action for the recovery of the amount of a promissory note or of a renewal, originally given for the purpose of raising funds to promote an election.

St. Pierre vs. L'Ecuyer, 23 Que. S. C. 495.

Cashon vs. Kaulbach (1910), 8 Eastern L. R. 411 (N. S.).

This is an action on a promissory note made by the defendants for \$1,800, dated October 20th, 1904, and payable on demand with interest at 6 per cent. It was given to the plaintiff for a loan of that sum, and the defence is that it was to be used illegally in connection with the election in Lunenburg county. R.S.C. 1906, Ch. 6, s. 279.

There is not evidence to shew that the plaintiff at the time of the loan knew that the money was to be used in connection with the election in any way or for what purpose it was to be used. Judgment for plaintiff, with interest and costs.

Gould vs. Gillies (1909) 7 Eastern L. R. (N. S.), 11 Russell, J.

In this case the plaintiff has recovered judgment against the defendant on a note of hand given for stock. The defendant counterclaims for damages for misrepresentation in the sale of the stock, and his right to so counterclaim is sustained. It is conceded that the defendant is entitled to recover on his counterclaim, as damages, the amount he paid for the stock. The only question raised is whether the defendant is entitled to interest from February, 1904, the time the note given for the stock matured, and Sept. 4th, 1906, as of which date the judgment will be entered on the counterclaim. The defendant has had to pay, or will have had to pay interest on the note from the date mentioned, and is, therefore, out of pocket to that extent in consequence of the misrepresentation but it is contended that his counterclaim for deceit or misrepresentation is only a common law action for damages, and that in no

such case would interest be given as part of the damages, interest being purely a statutory matter. Except in connection with certain kinds of commercial obligations.

The defendant, however, contends that he is not asking for interest as interest, but solely because he has been obliged to pay interest on this very transaction in consequence of the misrepresentation, and in connection with the note on which the plaintiff has recovered; that, in other words, he is out of pocket to the extent of the interest in the same manner as in respect to the principal amount paid for the stock.

It seems equitable that if the plaintiff is allowed to recover interest on the note given for the stock, and the defendant is allowed to counterclaim for damages for the amount of the note because of misrepresentation, the interest should run on the counterclaim as it does on the claim. *Weeks vs. Propert*, L. R. 8 C. P. 427.

Gratton vs. La Banque d'Hochelaga (1909), 37 Que. S. C. 324. Robidoux, J.

A bank which deals with an agent and negotiates notes which he endorses as such, is not held to inform itself or inquire how he uses the money advanced by it. But a bank, where it negotiates the personal notes of a client endorsed by him as mandatory of a third party, who is also a client of the bank and has a current account with it, and sees by its books the money of the third party, whose account is closed, pass by this operation, to the credit of the mandatory, whose account is increased accordingly, is sufficiently warned to be on its guard. If, without some satisfactory explanation, the bank continues to negotiate such notes, it becomes an accomplice of the agent in his abuse of confidence, and responsible towards the third party.

Subject, however, to C. C. 1048, if the notes have been cancelled.

Bacon vs. Decarie, 34 Que. S. C. 103.

See sec. 58.

Union Investment Co. vs. Wells, 39 Can. S. C. R. 625.

See sec. 58.

Ross vs. Gagnon, 39 N. S. R. 65 affirmed; 39 Can. S. C. R. 675.

Illegality. Smuggling transaction.

Canadian Bank of Commerce vs. Wait, 1 Alta. R. 68.

A bank or a person, to whom the promissory note of a third person is endorsed by way merely of collateral security, for an indebtedness then current, but which has not yet matured, takes such promissory note without giving consideration therefor (at any rate in the absence of a new agreement, and provided there is no right in the principal debtor to anticipate the date of payment), and such an endorsee is not a holder in due course. W. was induced by fraudulent misrepresentation and concealment on the part of the company to subscribe for shares in a limited company. In payment he made promissory notes payable to the company, the notes were endorsed to the bank of C., as collateral security for advances made by the bank to the company, not yet due or matured. After such endorsement, but prior to the maturity of the indebtedness of the company to the bank:—*Held*, that under the facts as stated the bank gave no consideration, was not a holder in due course, and that the maker could successfully plead fraud as a defence in an action by the bank on the notes. A defendant is, under such circumstances, entitled to rely on the defence of fraud,

and to bring in the company as third parties, notwithstanding that the company is in liquidation and the defendant has not taken steps to have his name removed from the list of shareholders; if the defendant has repudiated his contract to take shares with reasonable promptitude, and the action is begun before the commencement of winding-up proceedings. In such a case *non constat* that the third party notice is not issued until after commencement of winding-up proceedings.

56. Holder in Due Course—Notice—Good Faith.—A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:—

(a) That he became the holder of it before it was overdue and without notice that it had been previously dishonoured if such was the fact:

(b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

2. Title Defective.—In particular the title of a person who negotiates a bill is defective within the meaning of this Act, when he obtained the bill, or the acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. 53 V., c. 33, s. 29. Eng. s. 29.

Goldstein vs. Gillis, 10 W. L. R. 109.

Action on a bill of exchange.

Held, that plaintiff cannot recover as he took the bill with notice of an equity attaching, namely, that if 5 cars were not shipped promptly the bill was to be altered to read "30 days from date of shipment." The acceptance, therefore, was conditional.

"Holder" means the payee or endorsee of a bill or note who is in possession of it (sec. 2). "Bearer" is defined by sec. 2. The right and powers of a holder are defined by sec. 74. As to negotiation, see secs. 60 *et seq.*, and as to overdue or dishonoured bills, see secs. 70, *et seq.*

Wickwire vs. Carver, 24 D. L. R. 821.

A bill of exchange given for the sale of liquor in violation of the Prohibition Act is illegal and unenforceable, although such sale was effected by a resident agent for a non-resident creditor not having paid the license fee required by the Act. (*Brown vs. Moore*, 32 Can. S. C. R. 93 followed.)

Shore vs. Mead, 20 D. L. R. 813.

The endorsee of a promissory note after maturity and dishonour is a holder in due course if the endorser from whom he took it obtained it for value before maturity and without notice of any equity attaching to the note in favour of the maker.

Chaurest vs. Prevost 16 Que. P. R. 153.

The law presumes any holder of a bill to be a holder in due course, to have given value for it, and the obligation arising from the bill to have a lawful cause.

Merchants Bank vs. Williams, 6 W. W. B. 563.

Where a note of a third party is endorsed by way of collateral security to a bank by a person whose indebtedness to the bank has not matured, the bank having no right to anticipate the day of payment, the bank are not holders in due course.

First State Bank vs. Cloutier, 31 W. L. R. 504.

An action upon two promissory notes:—*Held* on the facts, the plaintiffs were not holders in due course for valuable consideration, and the plaintiff's claim was dismissed with costs.

Standard Bank vs. McCullough, 8 A. L. R. 320; 25 D. L. R. 813.

Collateral security to bank; holder in due course; authority of corporation officer to indorse.

Sparta State Bank vs. Alberta Financial Brokers, 9 W. W. R. 851; 25 D. L. R. 321.

The fact that a note was discounted by a bank on the strength of another note which it had required as collateral security does not in any way negative the fact that consideration was given for the note sued on, which, if received in good faith and without notice of defects in the title of the payee, makes the bank a holder in due course under sec. 55 of the Bills of Exchange Act.

Royal Bank vs. Hickney, 32 W. L. R. 349; 24 D. L. R. 525.

A promissory note indorsed over to a bank by the payee named in the note, even as a collateral, does not necessarily constitute the bank a holder in due course where there is no existing indebtedness on the part of the payee to the bank and is therefore not subject to summary judgment in face of a plea that the note was given to the payee on account of a sale of land to which no title could be made.

Penoyer Co. vs. Williams Machinery Co. 34 O. L. R. 493; 24 D. L. R. 607.

A promissory note marked "renewable" and indorsed to a *bona fide* transferee before its maturity does not prevent such transferee from being a holder in due course because of his failure to make inquiries to ascertain the title of the transferor, particularly where the note was originally given as "bankable paper" with power of discounting it.

Campbell vs. Gliz, 20 D. L. R. 27.

A person taking a bill of exchange or promissory note before maturity in good faith without notice of any defect and giving value for same obtains a valid title though he takes it from one who has none by reason of his having obtained it solely for collection on behalf of the previous holder.

Northern Elec. Mfg. Co. vs. Kasow Elec. and Seaborn, 29 W. L. R. 582.

Held, that where a person signed a note for the accommodation of the maker and entrusted the note to the maker a *bona fide* holder who acquired the note for the maker obtained an incontestable title thereto, although in parting with it the maker acted without authority or in breach of express instructions. Cases cited.

Canadian Bank of Commerce vs. Gillis, 20 O. W. R. 622.

The bill must be "complete and regular on the face of it," and meet all the requirements of section 17. If the bill itself conveys a warning *caveat emptor*. The holder, however honest, can acquire no better title than the person from whom he took it. Thus if the holder takes a blank acceptance (section 31) or a bill wanting in any material particular, such as an undated bill, etc., he takes it

at his peril, *Aude vs. Dixon* (1851), 6 *Exch.* 869; but the fact of a bill being post-dated does not prevent its being regular within the meaning of this section: *Carpenter vs. Strcet*, 6 T. L. R. 410 (1890). The holder also takes at his risk a bill which has been torn and the pieces pasted together, if the tears appear to show an intention to cancel it: *Ingham vs. Primrose* (1859), 7 C. B. N. S. 82.

See *Park vs. Pullisky*, 16 W. L. R. 475 (Alta.) cited under sec. 48.

CHEQUE.—STOPPING PAYMENT.—HOLDER IN DUE COURSE. — The defendant R. having given his cheque for \$491.25 to the defendant D., the latter indorsed it to the order of defendant G., who deposited it to her credit in the Banque d'Epargne, and drew \$450 on account of such deposit. The day after the cheque was signed payment of it was stopped by the maker and when, in the ordinary course of the bank's business, and within a reasonable delay, it was presented to the bank on which it was drawn payment was refused. Plaintiff, the official who had received the deposit by G., without requiring the cheque to be first marked "accepted" contrary to rule was held responsible for the amount to the Banque d'Epargne, and the plaintiff, handing cheque over to him, with subrogation of all their rights as to it that he might exercise his recourse against the parties. To his action against them the maker and indorsers pleaded that he was not a holder in due course since he did not become holder until after payment was refused and he was given notice of such refusal. *Held*:—That the indorser could not raise the question whether or not he was a holder in due course, the cheque not being a nullity.—That G. was a holder in due course, having become holder before it was presented for payment and consequently the Banque d'Epargne and the plaintiff, holding their title from her, possessed, as against the makers and indorsers, all the rights of a holder in due course.—That the maker and prior indorser should pay the full amount of the cheque, although the Banque d'Epargne had retained the balance of the deposit made by G, which was a personal affair between the latter and the bank. *Gauthier vs. Reinhardt*, Q. R. J., 26 S. C. 134.

"Notice" means actual, although not formal notice, that is to say, either knowledge of the facts, or a suspicion of something wrong, combined with a wilful disregard of the means of knowledge: *Raphael vs. Bank of England* (1885), 17 C. B. 174; but mere negligence does not fix a holder with the defective title of the person passing it to him. The fact that a bill is overdue, or that there is an irregularity patent on the face of it, operates as notice.

Notice to the principal is notice to the agent, and notice to the agent is notice to the principal, subject to the proviso (1) that when the agent is himself a party to the fraud he is not to be taken to have disclosed it to his principal. *Ex parte Oriental Bank* (1870), L. R. 5 Ch. 358 (1870); and (2) where a bill is negotiated to an agent and notice is given to the principal, or *vice versa* there must be a reasonable time for communication: *Cf. Willis vs. Bank of England* (1835), A. & E. 39.

Cox vs. Canadian Bank of Commerce, 21 Man. R. p. 1, 18 W. L. R. 568.

In consideration of the bank making fresh advances to a company of which plaintiffs were directors and one Finch was president and managing director. Finch pledged the note in question, a note of the company payable to plaintiffs and specially endorsed by them to the bank, as collateral security to the indebtedness of the company generally, and the bank made fresh advances accordingly.

Finch had authority from the plaintiff only to get the note discounted by the bank for the account of the company, but the bank had no notice of his want of authority to pledge the note as he did.

Held, the promise of the bank to make fresh advances and the actual making of them, were a good consideration for the pledge of the note, although the mere existence of the antecedent debt on current notes would not have been. The bank was a holder in due course, although Finch had no authority to pledge the note as he did. The bank was further entitled to hold the note as general collateral even after the fresh advances against which it was pledged, had been paid off.

As to good faith and the tests therefor, see section 3; for value, see section 53.

Lockhart vs. Wilson, 39 Can. S. C. R. 541.

See sec. 3.

Campbell vs. National Construction Co. (1909), 14 B. C. R. 444. Morrison, J.

Plaintiff, who was a confidential clerk of a director of the defendant company, and had been himself a director of the company, accepted from the said director a cheque of the company for \$2,663. The cheque had been issued on the understanding that it was to be used only for the purpose of exhibiting it to a tax collector to secure to the said director further time for payment of taxes on his own property. On the disappearance of the director, the defendant company stopped payment of the cheque, and plaintiff brought action, claiming he was a holder in due course:—

Held, on the evidence, that plaintiff had given no value for the cheque, and that he had notice of the defect in title when the cheque was indorsed over to him.

57. Right of Subsequent Holder.—A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder. 53 V., c. 33, s. 29. Eng. s. 29.

See sec. 54 as to a holder for value.

As to a holder in due course, see secs. 56 and 58.

Previous notice or knowledge of the original defect in the bill is not sufficient to preclude him from acquiring all the rights and privileges of a holder in due course: *May vs. Chapman* (1847), 16 M. & W. 355; *Embry vs. Jemison*, 131 U. S. 336 (1888).

Hobrecker vs. Sanders, 44 N. S. R. 14.

M. being indebted to the bank in a large amount upon a note of which plaintiff was indorser, and being about to leave the province, arranged with the defendant to assume the debt, which he did by making a note payable to plaintiff who, on defendant's assurance that M. had secured him and had arranged for money to meet the note, discounted the note, and used the proceeds to discharge M.'s liability. When the note given by defendant fell due he made several payments on account, but ultimately plaintiff had to take it up:—

Held, that under these circumstances, plaintiff was entitled to recover. One of the grounds of defence was that plaintiff promoted the passage of an Act through the Legislature under which certain

stock which M. deposited as security for his indebtedness was rendered valueless.

Held, that if the Act had the effect contended for, plaintiff could not be held responsible for it, and, further, that if the promoters of the Act were guilty of an improper action defendant was equally guilty with plaintiff.

Dean vs. MacLean, 44 N. S. R. 147.

The defence to an action on a promissory note was that the note in question was given for money advanced by the plaintiff with knowledge that it was to be used in an illegal stockjobbing transaction:—

Held, by Russell & Drysdale, JJ., that in order to succeed in this defence, it was necessary for the defendant to show that he was engaged in an illegal transaction and that plaintiff knew, when he advanced the money, that it was to be used for the furtherance of such transaction, and that, in the absence of such evidence, there should be judgment for plaintiff for the amount claimed with costs.

58. Presumption of Value.—Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

2. Due Course—Burden of Proof.—Every holder of a bill is *prima facie* deemed to be a holder in due course; but if, in action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress or force and fear, or illegality, the burden of proof that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course. 53 V., c. 33, s. 30. Eng. s. 30.

As to a holder for value, see notes to sec. 54.

As to fraud etc., as between the immediate parties, see sec. 56, sub-sec. 2.

Extrinsic evidence is admissible between immediate parties to prove absence, failure or illegality of consideration, but when a particular consideration is expressed extrinsic evidence is not admissible to prove a different consideration.

IMPEACHMENT OF VALUE.—Chalmers, p. 95-101, lays down the following rules as to the impeachment of value.

Rule 1.—Any defence available against an immediate party is available against a remote party who is in privity with such immediate party.

Privity is created in all cases by want of consideration, and in some cases by notice; it may also be created by agreement.

Rule 2.—Mere absence of consideration, total or partial, is matter of defence against an immediate party, or a remote party, who is not a holder for value, but it is not a defence against a remote party who is a holder for value: *Cf. Foreman vs. Wright* (1851); 11 C. B. 492. An accommodation party is liable to a holder for value, who takes a bill knowing him to be such: *Petty vs. Cooke* (1871), L. R., 6 Q. B. 790, and section 55.

Ethier vs. Labelle, 33 Que. S. C. 39.

See *re Onus of Proof*, sec. 49.

Canadian Bank of Commerce vs. Rogers, 23 O. L. R. 109, 18 O. W. R. 401.

"Capacity to indorse" means the ability to transfer a valid title to the indorsee.

The capacity to indorse was to be presumed—that is, in case of a company, that it has officers who can indorse.

Bank of B. N. A. vs. McComb, 21 Man. L. R. 58, 18 W. L. R. 94.

The defendant was a young man without experience and of little business capacity and without independent advice when he was induced by one Bartlett to enter into a very disadvantageous bargain for the sale of his land, which he could not carry out. Bartlett then made false representations as to the defendant's liability to him for damages and, assisted by his own solicitor, succeeded in procuring from the defendant the promissory note for \$1,015 sued on in settlement of the supposed damages. He then indorsed over this note to plaintiffs, to be held as collateral security for a note of his own which was then current.

Held, that the issue of the note was affected with fraud or illegality under this section, that the dealings between Bartlett and the defendant were unfair and should be set aside, and that the plaintiffs, not being holders in due course and having no better title to the note than Bartlett, could not recover against the defendant upon it. See cases cited.

Held, also, that the defendant was entitled to recover from the plaintiffs the amount which he had paid them under protest to prevent the seizure and sale of his goods under a chattel mortgage which he had been induced to give to Bartlett to secure the note in question and which Bartlett had assigned to the plaintiffs.

See this case cited under sec. 53.

Oldstaff vs. Linchan (1908), 1 Alta. R. 416 (Court of Appeal).

It being shown that a maker of a promissory note has been induced to sign it by fraud, if there is evidence sufficient to raise a doubt in the jury's mind as to the good faith of an endorsee, though the evidence may not conclusively establish bad faith on his part, the Court will not interfere with the finding of the jury that the endorsee had not satisfied the burden cast on him by sec. 58 Bills of Exchange Act, of establishing good faith. Evidence that the endorsee had on previous occasions bought promissory notes from the same payee under similar suspicious circumstances, and had heard rumours of their fraudulent nature, is admissible to prove notice or suspicion in the mind of the endorsee, and that he deliberately refrained from enquiry.

Kerm vs. Tambllyn, 27 W. L. R. 608, 16 D. L. R. 529.

Where the promissory note is shown to have been obtained by fraud, the plaintiff claiming as endorsee must prove that before its maturity he in good faith, gave valuable consideration therefor.

Peters vs. Perras, 1 Alta. R. 1.

Where, at the instigation of the seller of certain goods, a number of persons agreed to form an association and to subscribe for shares of stock, and it was represented that the association should consist of a definite number of subscribers, unless the full number of *bona fide* subscribers were secured, and the stock all taken up by them, the subscribers who have taken shares are not liable on a joint promissory note, not endorsed to and held by a holder in due course, made by them in payment of the goods sold and delivered, at least, under the circumstances in this case. When a pro-

missory note shews on its face that interest thereon was overdue at the time of its transfer, the transferee is put upon inquiry before purchasing, and it is a circumstance which coupled with other suspicious circumstances, will prevent the transferee being deemed a holder in due course.

Peters vs. Perras, 1 Alta. R. 201.

Where it is admitted or shewn that the maker of a promissory note has been induced to sign it by fraud, the effect of sec. 58 of the Bills of Exchange Act is to throw upon an endorsee for value from the payee the burden of proving affirmatively his honesty and good faith in becoming the holder of the note. It is not sufficient for such a holder to give evidence that he had no knowledge or information of the fraud, if there is evidence of suspicious circumstances, which tend to the belief that he suspected something wrong, but refrained from inquiry, and which throws doubt upon the holders' honesty and good faith. The burden is on the holder to remove such doubt, and to prove that he had no such suspicion. The mere fact that interest is overdue and unpaid on a promissory note is not of itself sufficient to give to the note the character of an overdue note so long as the principal has not yet matured, but nevertheless, this fact should put a party negotiating for such note upon enquiry. Carelessness, negligence or foolishness in not suspecting something wrong with a bill of exchange or promissory note, and consequent absence of enquiry, are not necessarily inconsistent with good faith, but they do constitute some evidence of bad faith. Nature of circumstances apparent on the face of the note, and from the relations between the parties, which were deemed suspicious in this case, discussed.

Reversed, 42 Can. S. C. R. 244.

Union Investment Co. vs. Wells, 39 Can. S. C. R. 625.

Where interest is made payable periodically during the currency of a promissory note, payable at a certain time after date, the note does not become overdue within the meaning of secs. 56 and 70 of the Bills of Exchange Act, merely by default in the payment of an instalment of such interest. The doctrine of constructive notice is not applicable to bills and notes transferred for value.

Rule 3.—Total failure of consideration is a defence against an immediate party, or even against remote parties with notice, provided value has not been given for the bill but is not a defence against a remote party, who is a holder in due course. *Robinson vs. Reynolds* (1841), 2 Q. B. 211 Ex. Ch., unless he has notice: *Oulds vs. Harrison* (1854), 10 Exch. 579. Where there is a total failure of consideration the renewal of a note does not establish liability: *Bullion Mining Co. vs. Cartwright*, 10 O. L. R. 438.

Rule 4.—Partial failure of consideration is a defence in England and in Ontario *pro tanto* against an immediate party when the failure is an ascertained and liquidated amount, but not otherwise: *Day vs. Nix* (1824), 9 Moore 159. The transaction must be repudiated immediately upon learning of the partial failure of consideration: *Primeau vs. Mouchelin*, 15 Man. R. 360. It is not a defence against a remote party who is a holder for value. *Archer vs. Bamford* (1822), 3 Starke, 175.

Rule 5.—Fraud is an offence against an immediate party, and against a remote party who is not a holder in due course: *Whistler vs. Forster* (1863), 14 C. B. S. 258.

The holder of a bill subsequent to a fraud, who is not a holder in due course cannot enforce payment against a holder party there-

to, neither can he retain the bill against the true owner: *Lloyd vs. Howard* (1850), 15 Q. B. 995.

Rule 6.—Illegality of consideration, total or partial, is a defence against an immediate party, but not against a holder in due course: *Hay vs. Ayling* (1851), 16 Q. B. 431.

Rule 7.—When a bill is given for a consideration which, by statute, expressly makes it void, it is, as against the party who gave it, void in the hands of all parties either immediate or remote: *Edwards vs. Dick* (1821), 4 B. and Ald. 212.

59. Usurious Consideration.—No bill, although given for a usurious consideration or upon a usurious contract, is void in the hands of a holder, unless such holder had, at the time of its transfer to him, actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract. 53 V., c. 33, s. 30.

The section is practically obsolete, as there is no usury law in force in Canada.

The protection of the section is not limited to a holder in due course or a holder for value, the sole condition being that the holder shall not have actual knowledge, etc.

NEGOTIATION.

60. By Transfer.—A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

2. By Delivery.—A bill payable to bearer is negotiated by delivery.

3. By Endorsement.—A bill payable to order is negotiated by the endorsement of the holder completed by delivery. 53 V., c. 33, s. 31. Eng. s. 31.

As to "holder," see sec. 2.

As to "bearer," see sec. 2. A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an indorsement in blank (sec. 21).

As to "delivery," see secs. 2, 40 and 41.

As to "endorsement," see secs. 62, *et seq.*

A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable (sec. 22).

Wellesley vs. McFaddin, 19 O. W. R. 637.

Cheque in possession of another bank.

An individual who personates the holder or who makes title through a forged indorsement is not the holder. *Smith vs. Union Bank* (1875), L. R., 10 Q. B. 295.

The indorsement and delivery must be made or authorized by the same person, sec. 40 (a). Where the payee of a note indorsed it in blank before his death, and his executors delivered it to plaintiff, it was held that the latter could not recover: *Bromage vs. Lloyd*, 1 Ex. 32 (1847).

On the death of the holder of a bill payable to his order, all his rights pass to his executors or personal representatives, who may negotiate it by indorsement: *Robinson vs. Stone*, 2 Str. 1260 (1746). So also if a bill be made payable to a dead man in ignorance of his death: *Murray vs. E. I. Co.*, 5 B. and Ald. 204 (1821).

Wickwire vs. Passage, 20 D. L. R. 864.

Each endorsement in blank of a promissory note is presumed, until the contrary is proved, to have been made in the order in which the endorsements appear on the note, and the endorsers are *prima facie* liable amongst themselves in the same order.

Heon vs. Bonnet (1910), 14 W. L. R. 534 (Sask.) MacLean, J.

The claim of the Plaintiff was set out in the statement of claim as follows:—"The plaintiff claims against the defendants for the payment of the sum of \$294.85, the amount of a promissory note and interest thereon, dated the 2nd December, 1907, and made by the defendants payable two years after date to the order of C. H., at —, which said promissory note was duly transferred by the said C. H. to the Plaintiff for valuable consideration, before maturity." The evidence at the trial shewed an indorsement and delivery and that the plaintiff was a holder in due course.

Held, that the pleading was insufficient to establish a right of action under the Bills of Exchange Act. The Plaintiff was allowed to amend and to allege that the note was duly transferred or indorsed to the Plaintiff, and the Plaintiff thereby became the holder for value in due course and the plaintiff was allowed to enter judgment for the amount of the note, with costs of a default judgment, less the defendants' costs of defence—as it was admitted that they would not have defended had the pleading been properly framed at first.

61. Without Endorsement.—Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transferer had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferer.

2. Representative Capacity.—Where any person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability. 53 V., c. 33 to 31. Eng. s. 31.

If the transferer should die before indorsing, his personal representatives would be subject to the same obligation: *Day vs. Longhurst*, 62 L. J. Ch. 334 (1893).

When indorsement is subsequently obtained, the transfer takes effect as a negotiation from the time when the indorsement is given: *Whistler vs. Forster* (1863), 14 C. B. N. S. 258. Where a note is not indorsed by the payee, the presumption is that it is still his property: *Demers vs. Hogle*, Q. R., 7 S. C. 476 (1895).

See section 34 (1), as to endorsements limiting or negating liability, and section 52.

Levallee vs. Burrage, 12 Que. P. R. 382 (Review).

An action on a note alleging that it is payable to a third party, without alleging that party's endorsement, will be dismissed on inscription in law.

First National Bank vs. Watson et al. (1909), Beck, J., 2 Alta. 249.

Illiterate persons sought to be bound by the terms of a written document handed to them but not signed by them.

Held, bound only by the terms of the agreement as they understood it.

Where there was a contract for a conditional sale of horses reserving the ownership in the seller, and this contract was assigned to the plaintiff under an arrangement between the purchaser and the seller and plaintiffs, in pursuance whereof the horses were to be sold, and the notes were to be delivered to the plaintiffs as collateral security for advances made against notes for the purchase price on original sale.

Held, that the plaintiffs were not in the position of *bona fide* holders for value without notice of notes taken from the purchasers of horses sold in pursuance of this arrangement.

Pacific Lumber Agency vs. Imperial Timber and Trading Co., 7 W. W. R. 260.

A note made by A., payable to the order of B. and not completed by the endorsement of the latter, but endorsed, when still incomplete, by a third party, will render such third party not liable or liable as an endorser of a negotiable instrument.

Tyrrell vs. Murphy, 30 O. L. R. 235, 18 D. L. R. 327.

If the payee of a promissory note in writing directs the maker to pay the amount due thereon to a third person, the latter, although not an endorsee of the note, becomes the beneficial owner of the money due thereon, and is entitled to hold the note against all the world; and the absence of an endorsement is no bar to his right to recover the consideration, since he is in a position to deliver the note to the maker on payment.

Tyrrell vs. Murphy, 30 O. L. R. 235; 18 D. L. R. 327.

A written order from the payee directing the maker of a promissory note to pay the amount due thereon to a third person, operates as an assignment, and not merely as an order which is revoked by the death of the signer.

Torney vs. McNeil, 28 W. L. R. 365, 18 D. L. R. 10.

Where the plaintiff suing on a promissory note is not the payee or endorsee, the onus is on him to prove that he is the holder if delivery to him is disputed by the defence.

Lilly vs. Robertson, 4 D. L. R. 852, 21 W. L. R. 585.

He is not a holder in due course who holds a note which at the request of the payee was not endorsed to him until after maturity. He holds it subject to the equities between maker and payee.

Heon vs. Bonnet, 14 W. L. R. 534.

See sec. 60.

62. Endorsing—Writing—Entire Bill.—An endorsement in order to operate as a negotiation,—

(a) must be written on the bill itself, and be signed by the endorser;

(b) must be an endorsement of the entire bill.

2. **Allonge.**—An endorsement written on an allonge or on a copy of a bill issued or negotiated in a country where copies are recognized, is deemed to be written on the bill itself.

3. **Partial Endorsement.**—A partial endorsement, that is to say, an endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the bill to two or more endorsees severally, does not operate as a negotiation of the bill. 53 V., c. 33, s. 32. Eng. s. 32.

See also sec. 63.

C. P. R. vs. Bank of Hochelaga. Que. R. 18 K. B. 237.

A bank on which a cheque to order is drawn and which has accepted it, is bound to pay the amount of it to a legal holder and is not permitted to set off against him a previous payment which it has made to a third party on an irregular endorsement.

An endorsement means an endorsement completed by delivery (sec. 2). As to delivery, see secs. 40 and 41.

It is sufficient if the signature of the endorser is written by some other person by or under his authority (sec. 4).

As to endorsement of bills in a set, see sec. 159.

An endorsement is usually made on the back of a bill, but it may be validly made on the face of it (*Young vs. Glover*, 1857, 3 Jur. N. S. Q. B. 637; *Ex parte Yates* 1858, 2 DeG. J. 191).

Where there is no room on a bill for further endorsements, a slip of paper, called an allonge, may be attached thereon. It becomes part of the bill, and endorsements may be written thereon.

"Copies" of bills are not used in England, Canada or the United States; but on the continent of Europe, where the practice of drawing bills in sets is not followed, copies are sometimes used for convenience of transfer while the original is being forwarded for acceptance. Maclaren on Bills, etc., 3rd ed. 203.

There may be a partial acceptance of a bill, sec. 38 (2b) and

Tapley vs. Paquet, 38 Que. S. C. 292.

an indorsement of such a bill would be valid, as it would be an indorsement of the entire bill as accepted (Maclaren). While invalid as a negotiation, a partial indorsement, purporting to split the right of action on a bill, may operate as an authority to receive payment of the amount thereby specified: *Heilbut vs. Nevill*, L. R., 4 C. P. 358 (1869).

Where a note runs "we jointly and severally promise to pay," is signed by A. and B. on its face, and B. prefixes to his signature the word "endorser," it is deemed to be the note of A. endorsed by B. Hence, in this province, in default of protest for non-payment and of notice thereof, B. is discharged from liability on the note.

Velie vs. Hanstreet, 2 Sask. R. 296.

Plaintiff, the drawer of a bill of exchange accepted by the defendant, brought action thereon. The bill was drawn payable to the order of the Dominion Bank, and was not indorsed by the bank, but in the statement of claim it was alleged that upon dishonour the bill was returned by the bank to the drawer who was then the holder thereof. The defendant appeared and filed a defence which was struck out on a motion for speedy judgment. On such motion the defendant filed no affidavit, but relied on the objection that the bill had not been indorsed to the plaintiff, who could not, therefore, maintain the action:—

Held, per Wetmore, C. J., and Johnstone, J., that as the defendant had, in answer to the motion, raised a difficult question of law which might be an answer to the plaintiff's claim, he should be permitted to defend. Per Newlands and Prendergast, J. J., that it was not necessary for the plaintiff in pleading to allege any facts which would be presumed in his favour, and it was, therefore, unnecessary to allege that the Dominion Bank were the holders for value, and it might be presumed that when they returned the bill to the plaintiff they were paid by him, and it was, therefore, unnecessary to allege payment in order to entitle the drawer to recover. (2) That it was not necessary for the Dominion Bank to indorse the bill to the drawer, as when the bank was paid the bill ceased to be negotiable, and the only right of action which exists is the right of action against the acceptor by the drawer, which he acquires not through the payee but by virtue of his original position as drawer. The court being evenly divided, appeal dismissed.

63. Signature Sufficient.—The simple signature of the endorser on the bill, without additional words, is a sufficient endorsement.

2. Two or More Payees.—Where a bill is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has authority to endorse for the others. 53 V., c. 33, s. 32. Eng. s. 32.

Cf., secs. 62 and 132.

Cooper vs. McDonald (1909), 19 Man., R., p. 1. (Appeal).

The indorsement of a promissory note payable to the order of an unincorporated non-trading association such as a trade union with the name of the association and the signatures of two or more of its officers will not enable the person to whom it is delivered so indorsed to sue the maker upon it. There is no valid method of indorsement of such a note, so as to pass a title to it under the law merchant, except by the signature of all the members of the association.

64. Misspelling Payee's Name.—Where, in a bill payable to order, the payee or endorsee is wrongly designated, or his name is misspelt, he may endorse the bill as therein described, adding his proper signature or he may endorse by his own proper signature. 53 V., c. 33, s. 32. Eng. s. 32.

The usual and proper course is for the payee to sign first the name as described or spelt in the bill, and then to put underneath his proper signature.

A bill payable to Mrs. John Jones, should be endorsed "Ellen Jones, wife of John Jones." The more usual, and a perfectly valid form, in such a case is for the payee to sign "Mrs. John Jones," adding underneath "Ellen Jones." The signature, "Mrs. John Jones" alone is clearly irregular, and probably invalid.

Davis vs. Reynolds, 2 Sask. R. 221.

See section 47.

65. Presumption as to Order of Endorsements.—Where there are two or more endorsements on a bill, each endorsement is deemed to have been made in the order in which it appears on

the bill, until the contrary is proved." 53 V., c. 33, s. 32. Eng. s. 32.

66. Disregarding Condition.—Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid, whether the condition has been fulfilled or not. 53 V., c. 33, s. 33. Eng. s. 33.

67. Endorsement in Blank.—An endorsement may be made in blank or special;

2. An endorsement in blank specifies no endorsee, and a bill so indorsed becomes payable to bearer.

3. **Special Endorsement.**—A special endorsement specifies the person to whom, or to whose order, the bill is to be payable.

4. **Application of Act to.**—The provisions of this Act, relating to a payee apply, with the necessary modifications, to an endorsee under a special endorsement.

5. **Conversion of Blank Endorsement.**—Where a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction to pay the bill to or to the order of himself or some other person. 53 V., c. 33, ss. 32 and 34. Eng. ss. 32 and 34.

ENDORSEMENT IN BLANK.—A bill payable to bearer is negotiated by delivery (sec. 60).

SPECIAL ENDORSEMENT.—An endorsement "Pay to D." or "Pay to the order of D." is equivalent to "Pay to D. or order" (sec. 22). A bill endorsed in any of these ways is specially endorsed, and is negotiated by the endorsement of the payee completed by delivery (sec. 60).

A special endorsement following an endorsement in blank controls the effect of the endorsement in blank (sec. 21).

PROVISIONS RELATING TO A PAYEE.—*See* secs. 10, 21 and 22.

CONVERSION OF BLANK INTO SPECIAL ENDORSEMENT.—The holder of a bill endorsed by C. in blank, writes over C.'s signature the words "Pay to the order of D." The holder who does this is not liable as an endorser, but the transaction operates as a special endorsement from C. to D.

If the holder has already converted the blank endorsement into a special one by writing a direction to pay to his own order over C.'s signature, and he desires to transfer the bill to D., without being liable as an endorser, the ordinary and proper method of doing so is for him to endorse the bill himself "without recourse."

If there are several blank indorsements, the holder may convert the first into a special indorsement without discharging the subsequent indorsers: *Bank of British N. A. vs. Ellis*, 2 Federal Reporter 46 (1880). He may also strike out any number of blank indorsements, but any indorser subsequent to one struck out is discharged; *aliter* if the indorsement be struck out by mistake: *Wilkinson vs. Johnson* (1824), 3 B. and C. 428. The holder may in some cases make title through a person whose name is struck out, *Fairclough*

vs. *Pavi* (1854), 9 Exch. 695; but *Cf. Bartlett vs. Benson* (1845), 14 M. and W. 733. Indorsements for collection may be struck out by the owner of the bill, and if the indorser of a bill takes it up or pays it when dishonoured, he may strike out his own and all subsequent indorsements whether blank or special; *Collow vs. Lawrence* (1814), 3 M. and S. 95. The possession of a bill after dishonour by an indorser with his special indorsement struck out is *prima facie* evidence that he took up the bill on its dishonour, although there was no re-indorsement to him; *Black vs. Strickland*, 3 O. R. 217 (1883).

ALTERATION TO SPECIAL INDORSEMENT.—SUBSEQUENT SUBSTITUTION OF NAME OF NEW SPECIAL INDORSEE.—A bank, being the holders in due course as collateral security to the account of a customer of a promissory note indorsed in blank, put their name with a stamp immediately above the indorser's name, thus converting the indorsement into a special one. Subsequently, and after maturity of the note, the account was taken over by the plaintiff bank, the intention being that the note in question and other collateral notes should pass with the account. The manager of the transferring bank handed the notes to the manager of the plaintiff bank, who, with a stamp, superimposed upon the name of the transferring bank authenticating the change by his initials:—*Held*, (Street, J., dissenting), that there had been a valid transfer, and that the plaintiffs were holders of the note in due course. Judgment of *Morgan, C. J.*, affirmed. *Sovereign Bank vs. Gordon*, 9 O. L. R. 146.

Rat Portage Lumber Co., Ltd. vs. Margutius, 24 Man. L. R. 230, and affirmed in 16 D. L. R. 477.

Where the plaintiff was endorsee for value of a promissory note but subsequently endorsed the note specially to a third party. In an action brought by plaintiff on the note as holder and owner, the Court may, at any time before judgment, allow the plaintiff to strike out the special endorsement, on a proper shewing, negating any interest in such third party.

68. Restrictive Endorsement.—An endorsement may also contain terms making it restrictive.

2. What is.—An endorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as hereby directed, and not a transfer of the ownership thereof, as for example, if a bill is endorsed "Pay D only," or "Pay D for the account of X," or "Pay D or order, for collection."

3. Rights of Endorsee.—A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as endorsee unless it expressly authorizes him to do so.

4. If further Transfer is Authorized.—Where a restrictive endorsement authorizes further transfer, all subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement. 53 V., c. 33, ss. 32 and 35. Eng. ss. 32 and 35.

Craik vs. Macfarlane, 21 Que. K. B. 10.

When a debtor, in account with his creditor, informs him that he will be unable to meet a note about to mature, and the creditor obtains from a third party, indebted, or about to be indebted, to the debtor on the contract between them, a note of the same amount, and uses it to take up the maturing note and it is paid in due course, the operations amounts to a payment made, if not by the debtor, for him and with his money, and the rule of art, 1161, etc., that imputation of it should be made upon the oldest debt, applies to it. Hence, if the indebtedness from the note taken up with the proceeds of the other is the oldest in the account, it is extinguished.

A statement in an indorsement that the value for it has been furnished by some person other than the indorsee does not make it restrictive, *e.g.*, Bill indorsed "Pay D., or order, value in account with X." is not restrictive, but in effect a simple indorsement to D. or order: *Buckley vs. Jackson* (1868), L. R., 3 Ex. 135. The mere omission to add words of negotiability to a special indorsement does not make it restrictive, see section 22.

Nicholson vs. McKale, 41 Que. S. C. 340.

Signing a negotiable instrument in a representative or descriptive character does not *per se* exempt from personal liability to escape personal liability an individual must sign in such a way as absolutely to negative his personal liability, and if, through carelessness or otherwise, he fails to do this, he is personally liable.

See case cited.

A bank, to which a promissory note is indorsed for "collection" becomes, for that purpose, the agent of the indorser, to whom it is bound to account for the amount collected. 2. The signature of another party, under that of such indorser, does not affect the relative rights and obligations growing out of such restrictive indorsement. 3. The bank is bound to pay a cheque drawn for a part only of funds collected by it under the foregoing circumstances, and is liable in damages for refusal to do so.

If the restrictive indorsement be in favor of the indorser "or order," this gives him authority to transfer the bill, but always subject to the same restriction as in the indorsement to himself: *Munroe vs. Cox*, 30 U. C. Q. B. 363 (1870):

The relation between the restrictive indorser and indorsee is that of principal and agent, so that if the acceptor pay the indorser, the indorsee cannot recover from him, although he may have given value for the bill: *Williams vs. Shadbolt*, C. & E. 529 (1885).

Canadian Bank of Commerce vs. Gillis, 2 D. L. R. 250.

The holder of a note which bears upon it a written condition as to payment, has no better right than the payee, and cannot recover on it if fraudulently obtained from the maker.

69. When Negotiability Ceases.—Where a bill is negotiable in its origin, it continues to be negotiable until it has been,—

(a) restrictively endorsed; or,

(b) discharged by payment or otherwise. 53 V., c. 33, s. 36, Eng. s. 36.

As to bills negotiable in their origin, see sec. 21. See sects. 137, 145 as to discharge, and sec. 68 as to restrictive endorsements. In the case of *The Exchange Bank vs. Quebec Bank*, M. L. R., S. C. 10 (1890) where a cheque payable to C. M. and S. or bearer was indorsed by them and stamped for deposit to their credit in the bank

where they kept their account, and their clerk, instead of depositing it, took it to the bank on which it was drawn and received payment, the teller not noticing the writing on the back, it was held that such a cheque could not be restrictively indorsed. The check was payable to bearer, and the Court decided that no indorsement other than that by the payee could stop the negotiability of the bill, under Art. 2288 of the Quebec Civil Code.

As to transfer of an incomplete bill, see section 31.

Newton vs. Hussars, 20 D. L. R. 617.

A promissory note given by the client for solicitor's fees is subject to the equities attaching to it in the hands of the original payees when transferred after maturity; and where the costs would be subject to taxation the transferee will be entitled to judgment only for the amount at which the costs will be taxed on a reference for taxation, but not exceeding the amount of the note.

70. Overdue Bill—Equities.—Where an overdue bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it.

2. Demand Bill when.—A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time.

3. Time.—What is an unreasonable length of time for such purpose is a question of fact. 53 V., c. 33, s. 36. Eng. s. 36.

Bank of B. N. A. vs. Warren (1909), 14 O. W. R. 325, 19 O. L. R. 257.

When is a cheque overdue?

A time bill or note is overdue after the expiration of the last day of grace: *Cf. Leftly vs. Mills* (1791), 4 T. R. 170.

As to the term "defect of title," see sect. 29 (2) and sect. 30 (4). Mere absence of consideration is not an equity which attaches to a bill, *Sturtevant vs. Ford* (1842), 4 M. & Gr. 101; but that if there be an agreement, express or implied, not to negotiate an accommodation bill after maturity, *Grant vs. Winstanley*, 21 U. C. C. P. 257 (1171), or to use a note only for a particular purpose. *McArthur vs. MacDowell*, B. S. C. Can. 571 (1893), the agreement constitutes an equity attaching to such bill and note.

Compare sect. 77 (3) as to test of reasonable time.

By section 68 (3) notes payable on demand which have been negotiated, being regarded as continuing securities, are exempted from this sub-section, but it applies to cheques: see sect. 165.

The tendency, however, seems to be to treat cheques with more clemency than bills, especially if the latter be payable at a fixed period, and an interval of six or eight days has been held not to be an unreasonable length of time. *Rothschild vs. Corney*, 1 D. & L. 325; *London & County Bank vs. Groom*. L. R. 8 Q., B. D. 228, but a cheque taken two months after date has been held to be stale. *Serrell vs. Derbyshire Railway Co.*, 9 C. B. 811.

Merchants Bank vs. Thompson (1911), 18 O. W. R. 582.

See sec. 54.

Union Invest. Co. vs. Wells, 39 Can. S. C. R. 625.

See sec. 58.

Peters vs. Perras, 1 Alta. R. 201. Reversed in 42 Can. S. C. R. 244.

See sec. 58.

Northern Crown Bank vs. International Electric Co., 22 O. L. R. 339.

A promissory note payable on demand was indorsed to the plaintiffs on the day it bore date:—

Held, that it was not overdue when negotiated so as to affect the plaintiffs as holders with defects of title of which they had no notice. Sections 70 and 182 of the Bills of Exchange Act considered. *In re George* (1890), 44 Ch. D. 627, and *Edwards vs. Walters* (1896), 2 Ch. 157 distinguished.

71. Presumption as to.—Except where an endorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue. 53 V., c. 33, s. 36. Eng. s. 36.

Cf. sec. 70.

72. Taking Bill with Notice of Dishonour.—Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this section shall affect the rights of a holder in due course. 53 V., c. 33, s. 36. Eng. s. 36.

This section settles a disputed point, by putting a bill known to be dishonoured on the same footing as an overdue bill (see sec. 70).

As to dishonour by non-acceptance, see sec. 81. "Holder in due course" is defined by sec. 56; see notes to that section as to the meaning of notice.

73. Re-Issue of Bill.—Where a bill is negotiated back to the drawer, or to a prior endorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable. 53 V., c. 33, s. 37. Eng. s. 37.

TO WHOM HE WAS PREVIOUSLY LIABLE.—The rule of the latter part of the section is a rule against circuity of action.

The drawer of a bill payable to drawer's order endorses it for value to C., who endorses it back to D., who endorses it back to the drawer. The drawer cannot recover from C. or D., for each of them in turn could recover from him as drawer.

The payee of a bill endorses it "without recourse" to D., who endorses it to E., who endorses it back to the payee. The payee, in his character of third endorsee, can sue D. and E., for they have no claim against him as prior endorser.

The prior endorsement of the payee is not necessary in the case of an endorsement for the accommodation of the acceptor. An endorsement on a bill to one who is about to take it is valid, with-

out the payee's prior endorsement, but the endorsement creates no obligations to those who were previously parties to the bill; it is solely for the benefit of those who take subsequently.

Cf. *Wilders vs. Stevens*, 1846, 15 M. & W. 212; *Morris vs. Walker*, 1850, 15 Q. B. 594; *Duthie vs. Esseny*, 1895, 22 A. R. 192; *Glenie vs. Smith* (1907), 2 K. B. 507; *Smith vs. Richardson*, 1865, 16 C. P. 210; *Falconbridge*, pp. 481-2; also notes to sec. 131.

74. Rights of Holder.—The rights and powers of the holder of a bill are as follows:—

(a) **May Sue.**—He may sue on the bill in his own name;

Marson vs. Taylor, 34 Que. S. C. 37.

The rights of a holder, for collection only, of a bill of exchange, against the acceptor and parties liable, are personal to himself, as the *prete nom* of the owner, and are not transmitted, upon his death, to his heirs. When, therefore, such a holder dies during the pendency of a suit brought by him on the bill, his heirs have no right to continue it in his stead.

(b) **Prior Defect.**—Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;

(c) **Title from Him.**—Where his title is defective, if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and,

Robertson vs. W. Register Co., 19 Man. R. 402.

See section 183.

(d) **Discharge from Him.**—Where his title is defective, if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill. 53 V., c. 33, s. 38. Eng. s. 37.

This section deals only with the rights acquired by negotiation (sec. 60), that is, by transfer according to the form required by the law merchant.

See sec. 2, as to holder;

Sec. 56, as to holder in due course;

Secs. 56 and 70, as to defect of title;

Sec. 139, as to payment in due course.

By sec. 2, clause (k), defence includes counter-claim.

The right to sue upon a bill accrues upon its dishonour for non-acceptance, sect. 82, or for non-payment, sect. 95 (2).

Chalmers, p. 123, gives the following rules as to rights of action:—

Rule 1.—The holder of a bill is entitled to maintain an action thereon in his own name against all or any of the parties liable thereon, unless it be shown that he holds the bill adversely to the true owner: *Jones vs. Broadhurst* (1850), 9 C. B. 173.

If a holder sues on a note, and he is not the owner, but is merely acting for another, any defence that could be set up against the real owner is available against him, *Biron vs. Brossard*, M. L.

R. 2 S. C. 105 (1880), but where a person holds a bill as agent or trustee for another, he cannot use it as a set-off against a claim made against him individually: *London & Bombay Bank vs. Narraway* (1872), L. R. 15 Eq. 93.

Rule 2.—Subject to the rules as to transmission by act of law, when a bill is payable to a particular person or persons, or to his or their order, an action thereon must be brought in the name of such person or persons: *Atwood vs. Rattenbury* (1822), 6 Moore 582.

Rule 3.—Subject to Rule 1, when a bill is payable to bearer, an action may be brought in the name of any person who has either the actual or constructive possession thereof, and constructive possession jointly with others is sufficient to entitle the possessor to sue alone: *Jenkins vs. Tongue* (1860), 29 L. J. Ex. 147.

A bill or a cheque may be seized under a writ of execution. *Watts vs. Jeffries*, 3 Mac. & G. 422.

On the death of a holder of a bill the title thereto passes to his personal representatives: Williams, on Executors, 7th ed., 786.

Each one of the heirs of the creditor of a bill or note may sue for and recover his share of it: *Ex parte Desharnais*, Q. R., 11 S. C. 484 (1897).

In case of insolvency the title to the debtor's bills and notes, and the right to sue thereon, passes to the assignee or trustee (MacLaren).

An executor or administrator who indorses a bill may, in express terms, exclude personal liability, see sec. 61 (2), and as he is not the agent of the deceased he cannot by his delivery complete an indorsement written by the latter. He must indorse it *de novo*. When there are two or more executors, the indorsement of one is probably sufficient to transfer the property in the bill. (Chalmers, p. 127.)

The principal defects of title arise from the causes mentioned in sect. 56. "Mere personal defences" include, in addition to these, set-off compensation, etc. They would not include want of capacity, want of authority, the defence of forgery, or the like. (MacLaren).

If a bill be made payable to bearer or endorsed in blank, the person in possession may be presumed to be entitled to receive payment in due course, and payment to him is valid if made in good faith, although he may be a thief, finder or fraudulent holder. (Byles, p. 293).

In order to vitiate such a payment, bad faith must be clearly shown. Proof of suspicious circumstances would not suffice. *Ferrie vs. Wardens of the House of Industry*, 1 Rev. de Leg. 27 (1845).

Canadian Pacific Railway Co. vs. La Banque d'Hochelaga (1909), Q. R. 18, K. B. 237.

A bank upon which a cheque payable to order is drawn and accepted is obliged to pay the amount to a lawful holder though it had previously paid it to a third party on an irregular and insufficient indorsement. And this though such third party has remitted funds to the holder not specifically to cover the amount of the cheque but for what he owed on a current account.

PRESENTMENT FOR ACCEPTANCE.

75. When Necessary.—Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

2. **Express Stipulation.**—Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

3. **Other Cases.**—In no other case is presentment for acceptance necessary in order to render liable any party to the bill. 53 V., c. 33, s. 39. Eng. s. 39.

As to due date of bills payable at and after sight, see section 45 (2).

Where presentment is optional, the object of presenting is (1) to obtain the acceptance of the drawee and thereby secure his liability as a party to the bill and (2) to obtain an immediate right of recourse against antecedent parties in case the bill is dishonoured by non-acceptance. An agent is bound to use due diligence in presenting for acceptance, even when presentment is optional for the purposes of the Act, and he is liable to his principal for damage resulting from his negligence: *Bank of Van Dieman's Land vs. Victoria Bank* (1871), L. R. 3 P. C. 542. A bill in the form "Pay without acceptance" is valid: *R. vs. Kinnear* (1838), 2 M. & R. 117.

Subject to sect. 77, the question of due presentment is material only when acceptance cannot be obtained. If acceptance is obtained, the informality of the presentment is immaterial. (Chalmers, p. 132).

For persons to whom presentment should be made, see sect. 78.

For place and hour of presentment, see section 85 and note to section 78.

76. **Presentment Excused.**—Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers. 53 V., c. 33, s. 39. Eng. s. 39.

Cf. s. 75.

77. **Sight Bill.**—Subject to the provisions of this Act, when a bill payable at sight or after sight, is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

2. **If not Presented.**—If he does not do so, the drawer and all endorsers prior to that holder are discharged.

3. **Reasonable Time.**—In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. 53 V., c. 33, s. 40; 54-55 V., c. 17, s. 5. Eng. s. 40.

The provisions of the Act to which this section is subject are those found in section 79 relating to excuses for presentment.

Reasonable time is a mixed question of law and fact, and in determining it regard must be had to the interests of the holder as well as to the interests of the drawer and indorsers; *Ramehurn Mullick vs. L. Radakissen* (1854), 9 Moore P. C. 46.

78. Rules.—A bill is duly presented for acceptance which is presented in accordance with the following rules, namely:—

(a) **By Holder to Drawee.**—The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue;

(b) **To all Drawees.**—Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only;

(c) **To Personal Representative.**—Where the drawer is dead presentment may be made to his personal representative;

(d) **Post-office.**—Where authorized by agreement or usage, a presentment through the post-office is sufficient. 53 V. c. 33, s. 41. Eng. s. 41.

As to the cases in which presentment for acceptance is necessary, see secs. 75 to 77.

The question of due presentment is material only where the holder of a bill payable at or after sight fails to present it for acceptance or to negotiate it within a reasonable time (sec. 77) or when acceptance cannot be obtained. Acceptance cures the informality of the presentment.

The holder by whom or on whose behalf the bill is presented need not be the owner or even a lawful holder: *Cf. Morrison vs. Buchanan* (1833), 6 C. & P. 18; *Noughier*, sec. 462. He must actually exhibit the bill: *Fall River U. Bank vs. Willard*, 5 Metcalf (Mass.) 216 (1842). Presentment to a servant of the drawee who opened the door of his residence would not be sufficient (*Chitty on Bills*, 11 ed., p. 156), but presentment to a clerk in his office would be valid. Reasonable diligence must be used to find the drawee or some person authorized to act for him. When the drawee is a trader, presentment should be made to him at his place of business, if possible. As to what is a reasonable hour, the rule may be stated as follows:—If a bill be payable at a bank, it must be presented within banking hours: *Waters vs. Reiffenstein*, 16 L. C. R. 297 (1866). If at a trader's place of business, then within ordinary business hours. Presentment at 5 p.m. at the door of a store which was found closed held sufficient: *Reed vs. Kavanagh*, 9 N. B. (4 Allen) 457 (1859). If at a private house, probably a presentment up to bed-time would be sufficient. In the U. S. presentments at 8 a.m. and 11 p.m. have been held unreasonable (*Daniel*, p. 448), but presentment at the makers' residence at 9 p.m. was held sufficient, although he and his family had retired: *Farnsworth vs. Allen*, 4 Gray 453 (1855).

Any day is a business day except those mentioned in section 43. See section 2.

A bill should be presented for acceptance before maturity. If accepted after maturity it becomes a bill payable on demand, and

should then be presented for payment within a reasonable time so as to bind endorsers after acceptance: sec. 86.

If all the drawees do not accept, the acceptance is a qualified one, sect. 8. As to the consequences of a qualified acceptance, see section 83.

For presentment for payment through the post or at the post office, see section 90 (2) and 90.

79. Excuses—Drawee Dead— Impracticability — Waiver.—Presentment in accordance with the aforesaid rules is excused, and a bill may be treated as dishonoured by non-acceptance,—

(a) Where the drawee is dead, or is a fictitious person or a person not having capacity to contract by bill;

(b) Where, after the exercise of reasonable diligence, such presentment cannot be effected;

(c) Where, although the presentment has been irregular, acceptance has been refused on some other ground:

2. Excuse.—The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment. 53 V., c. 33, s. 41; 54-55 V., c. 17, s. 6. Eng. s. 41.

Where presentment would otherwise be obligatory, it is excused in the cases mentioned in this section.

As to the cases in which presentment for acceptance is necessary, see secs. 75 to 77.

As to what is due presentment, see sec. 78.

Where the drawee is dead, presentment to his personal representative is optional (sec. 78S).

As to capacity to contract by bill, see sec. 47.

80. Time for Acceptance.—The drawee may accept a bill on the day of its due presentment to him for acceptance or at any time within two days thereafter;

2. Dishonour.—When a bill is so duly presented for acceptance and is not accepted within the time aforesaid the person presenting it must treat it as dishonoured by non-acceptance.

3. Loss of Rights.—If he does not so treat the bill as dishonoured, the holder shall lose his right of recourse against the drawer and endorsers.

4. Date of Acceptance.—In the case of a bill payable at sight or after sight, the acceptor may date his acceptance thereon as of any of the days aforesaid but not later than the day of his actual acceptance of the bill.

5. Refusing to Accept.—If the acceptance is not so dated the holder may refuse to take the acceptance, and may treat the bill as dishonoured by non-acceptance. 2 E. VII., c. 2, s. 1. Eng. s. 42.

In reckoning the time non-business days are to be excluded (sec. 6).

The destruction or wrongful retention of the bill by the drawee does not amount to an acceptance. Protest may be made on a copy

or written particulars (sec. 120), and the holder's remedy against the drawee is an action for damages.

As to the date of acceptance, cf. sec. 37, *supra*, in regard to acceptance after dishonour.

81. Dishonour—Presentment—Excuse.—A bill is dishonoured by non-acceptance,—

(a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or,

(b) when presentment for acceptance is excused and the bill is not accepted. 53 V., c. 33, s. 43. Eng. s. 43.

As to the cases in which presentment is excused, see sec. 79.

As to due presentment, see sec. 78.

As to acceptance, see secs. 35, *et seq.*

If the holder does not obtain an unqualified acceptance, he may treat the bill as dishonoured by non-acceptance (sec. 83).

As to the holder's right of recourse in the event of the dishonour of a bill by non-acceptance, see sec. 82.

82. Recourse in such Case.—Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and endorsers accrues to the holder and no presentment for payment is necessary. 53 V., c. 33, s. 43. Eng. s. 43.

Subject to the provisions of the Act (see sec. 147, *infra*, as to acceptance for honour), the holder has an immediate right of recourse against drawer and endorsers. This right is suspended in the event of acceptance for honour with the holder's consent. Even if a bill has been dishonoured by refusal to accept, it is open to the holder to allow the bill to be accepted subsequently (sec. 37).

Although, except as above noted, the holder has an immediate right of recourse upon non-acceptance, his right of action is not complete until the defendant has received, or ought to have received, notice of dishonour, and, in the cases where protest is necessary the bill has been protested. See secs. 95 and 96.

As to the necessity for protest, see secs. 112 and 113.

83. Qualified Acceptance.—The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

2. Assent.—When the drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto. 53 V., c. 33, s. 44. Eng. s. 44.

As to what acceptances are qualified, see sec. 38.

As to the holder's rights in the event of the dishonour of a bill by non-acceptance, see sec. 82 and notes.

84. Qualified Acceptance without Authority—Partial Acceptance.—Where a qualified acceptance is taken, and the drawer

or an endorser has not expressly or impliedly authorized the liability on the bill: Provided that this section shall not apply to a partial acceptance, whereof due notice has been given. 53 V., c. 33, s. 44. Eng. s. 44.

Assent to a qualified acceptance will be implied as against a drawer or any endorser who receives notice of such an acceptance and does not within a reasonable time express his dissent to the holder (sec. 83).

Where a foreign bill has been accepted as to part, it must be protested as to the balance.

If the holder is willing to accept the offer, he should then give notice of its exact terms to all the antecedent parties, and state his readiness to accept the offer if they will respectively consent: Daniel, sect. 510.

PRESENTMENT FOR PAYMENT.

85. Necessity.—Subject to the provisions of this Act, a bill must be duly presented for payment.

2. Result of None.—If it is not so presented, the drawer and endorsers shall be discharged.

3. Manner of.—Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment. 53 V., c. 33, ss. 45 and 52. Eng. ss. 45 and 52.

The provisions of the Act referred to are section 76, sections 86 to 93.

In presenting a bill it should be exhibited, section 109, and upon payment being made delivered up to the party paying. As to presentment of cheques, see section 166.

A drawee or indorser who is discharged from his liability on the bill is also discharged from his liability on the consideration therefor: *Hart vs. McDougall*, 25 N. S. 38 (1892). No presentment is necessary as against the acceptor, who is the primary debtor, but if the bill be payable in a specified place and be sued before presentment, the costs are in the discretion of the court: sect. 113. See *McLellan vs. McLennan*, 17 U. C. C. P. 109 (1866).

The rules applicable to the drawer or indorser of a bill apply equally to the indorser of a note or cheque, but they do not apply to the maker of a note, and they are modified as to time as regards the drawer of a cheque, section 166, 183 and 184.

Johnston vs. L'Heureux, 27 W. L. R. 21

The promissory note sued upon was signed in the name of what was said to be a partnership composed of the two defendants:—*Held*, upon the evidence that the defendant R. L. was not a partner of the defendant F. L., and was not interested in the business carried on under the name referred to, and had not held herself out to the plaintiff as a partner and, as against the defendant R. L., the action failed. *Held*, that the plaintiff's rights were governed by sec. 140; that sec. 61 did not apply; and that no re-endorsement was necessary in order to give the plaintiff the right to sue.

Robertson vs. Northwestern Register Co. (1910), 19 Man. L. R. 402 (Court of Appeal).

Action by indorsees of promissory note given by defendant company to the payees for value. The plaintiffs took the note during

its currency as security for an advance to the payees. The note was payable at the Bank of Hamilton, Winnipeg. At its maturity the secretary-treasurer of defendant company went to the office of the payees and gave them a renewal note without inquiring for the original. The payees then negotiated the renewal note and the defendant company afterwards paid it.

The trial judge was satisfied upon the evidence that the original note had been presented for payment before action, but he nonsuited the plaintiffs on the ground that they, being shareholders in the payee company, were personally bound by the wrongful action of that company in taking the renewal note.

Held, per Perdue and Cameron, J.J.A. (1), That the non-suit was wrong, as there was nothing to show that the plaintiffs were not holders in due course.

(2) That the action of the defendants in giving the renewal note and subsequently paying it amounted to an acknowledgment that the original note was made with their authority and that they were liable on it.

Per Cameron, J. A. (1), That, under section 183 of the Bills of Exchange Act, presentment of the note for payment before action was not necessary, following *Merchants Bank vs. Henderson* (1898), 28 O. R. 360. (a); *Freeman vs. Canadian Guardian Co.* (1908), 17 O. L. R. 296, and dissenting from *Warner vs. Symon-Kaye* (1894) 27 N. S. R. 340, and *Jones vs. England* (1906), 5 W. L. R. 83.

(2) That the defendants were liable on the note although it was not duly made under their by-laws, as innocent holders of negotiable securities are not bound to inquire whether certain preliminaries which ought to have been gone through have actually been gone through.

Imperial Bank vs. Farmers' Trading Co. (1901), 13 M. R. 412 and *Re Land Credit Co.* (1869), L. R. 4 Ch. 469, followed.

Per Richards, J. A. That it was necessary to prove presentment before action and this had not been done.

Per Perdue, J. A. That there was sufficient evidence of presentment before action.

Appeal allowed and verdict entered for plaintiffs with costs.

86. Time for—Due Date—Demand Bill.—A bill is duly presented for payment which is presented,—

(a) when the bill is not payable on demand, on the day it falls due:

(b) when the bill is payable on demand, within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement, in order to render the endorser liable.

2. Reasonable Time.—In determining what is a reasonable time within the meaning of this section regard shall be had to the nature of the bill, the usage of trade with regard to similar bills and the facts of the particular case. 53 V., c. 33, s. 45. Eng. s. 45.

As to when a bill is payable on demand, see sec. 23. When a bill is not payable on demand, it is due and payable on the third day of grace (sec. 42).

So far as an endorser is concerned this section applies to a

cheque. A cheque is a bill drawn on a bank payable on demand (sec. 165). But the effect, so far as the drawer of a cheque is concerned, of the failure to present a cheque for payment within a reasonable time of its issue is the subject of special provisions (sec. 166; cf. exception to sub-sec. 2, sec. 165).

As to the presentment for payment of a note payable on demand, see sec. 180.

As to what is reasonable time, cf. secs. 70, 77 and 166.

Due presentment as regards time is required as regards the drawer and endorsers (sec. 85), but not as regards the acceptor (sec. 93).

Union Bank vs. McCullough, 7 D. L. R. 694.

The duty of the bank where a note is payable is to hold it for surrender to the maker upon payment, or to charge it to his account if sufficient funds to his credit.

87. By and to Whom.—Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place, as hereinafter defined, either to the person designated by the bill as payer or to his representative or some person authorized to pay or to refuse payment on his behalf, if, with the exercise of reasonable diligence such person can there be found.

2. Two Acceptors.—When a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

3. Personal Representations.—When the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative if such there is, and with the exercise of reasonable diligence, he can be found. 53 V., c. 33, s. 45. Eng. s. 45.

Chaurest vs. Prorost, 16 Que. P. R. 153.

A defendant sued as maker of the notes claimed cannot have any interest in knowing the date of their presentation for payment, except in the case provided for by law, in order to establish the amount of damages he has suffered owing to the delay in their presentation for payment.

Cassidy vs. Katz, 46 Que. S. C. 409.

The endorser of a demand note payable by monthly instalments, who undertakes, in writing, with the holder, but without joint and several liability, to secure the maker, does not lose the benefit of the terms if the latter makes a judicial assignment for the benefit of his creditors. Although a demand note should be presented for payment and protested within a reasonable time in order to bind the endorser, yet, if the note is payable by instalments, the holder may wait to protest it until the first instalment becomes due after the maker's assignment and moreover, the endorser did not, by that delay, supply any prejudice.

In *Fraser vs. McLeod*, 2 Terr. L. R. 154, the plaintiff, before maturity, pursuant to administrators' advertisement for creditors, filed with their solicitor a copy of a note endorsed by the deceased and a statutory declaration that it was unpaid. *Held*, that this is

not such a presentment as is required by section 85 of the Bills of Exchange Act. *Held*, also, that, notwithstanding the indorser became one of the deceased maker's administrators before maturity of the note, presentment and notice of dishonour were nevertheless necessary.

As to presentment through the Post Office, see sec. 90. If the bill be lost, a copy should be presented and an indemnity tendered, but there is some doubt as to the efficiency of this (Chalmers, p. 143). A protest can be made on a copy, section 120. As to the parts of a set, see sec. 158. As to non-business days, secs. 2 and 42.

DUTIES OF AGENT.—A collecting agent is, of course, liable to his principal if he does not use due diligence in presenting a bill for payment and take the proper proceedings on dishonour. *Cf. Lubbock vs. Tribe* (1838), 3 M. & W. 612, and see *Deverill vs. Burnell* (1873), L. R., 8 C. P. 475, as to measure of damages. The same rule applies to a pledgee or person holding a bill as collateral security: *Peacock vs. Purssell* (1863), 32 J. C. P. 266. An agent is, as a rule, responsible for the default of a sub-agent whom he employs, but there is perhaps an exception in the case of a notary, on the ground that he is a public officer (Daniels, p. 343; Parsons, p. 480).

If the acceptors are in different places so that presentment cannot be made to all on the day of maturity, the bill should be presented to at least one on that day and to the others as soon as practicable (Maclaren). Of course if one pays, or in refusing payment acts as agent of the others, that is enough (Chalmers, p. 146).

Presentment for acceptance under sub-sec. 3 in such a case is excused, but may be made: section 78.

88. Place of—When Specified—When not Specified—When no Address is Given—Other Cases.—A bill is presented at the proper place,—

(a) Where a place of payment is specified in the bill or acceptance, and the bill is there presented;

(b) Where no place of payment is specified but the address of the drawee or acceptor is given in the bill, and the bill is there presented;

(c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known;

(d) In any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence. 53 V., c. 33, s. 45. Eng. s. 45.

This section and secs. 89 and 90 deal with the place of presentment. As to the necessity for presentment, see sec. 85, as to time, see sec. 86, and as to the persons by and to whom presentment must be made, see sec. 87.

The place of payment may be specified either by the drawer or acceptor. Where a person accepts a bill payable at his own bank, it is in effect an order to the bank to pay it, unless notified to the contrary, and to charge it to his account: *Bank of England vs. Vagliano* (1891), A. C. 107.

89. Sufficient Presentment.—Where a bill is presented at the proper place, as aforesaid, and, after the exercise of reasonable diligence, no person authorized to pay or refuse payment can there be found, no further presentment to the drawee or acceptor is required. 53 V., c. 33, s. 45. Eng. s. 45.

Cf. secs. 88 and 96.

90. Presentment at Post-Office.—Where the place of payment specified in the bill or acceptance is any city, town or village, and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and if there is no such place of business or residence, the bill is presented at the post-office, or principal post-office in such city, town or village, such presentment is sufficient.

2. Through Post-Office.—Where authorized by agreement or usage, a presentment through the post-office is sufficient. 53 V., c. 33, s. 45. Cf. Eng. s. 45.

Cf. secs. 88 and 89.

If the bill is payable at a bank in a town where there is a clearing-house, it has been held that presentment through the clearing-house is sufficient: *Reynolds vs. Chettle*, 2 Camp. 596 (1811). If alternative places are named, it is sufficient to present it at one: *Beeching vs. Gower, Holt*, N. P. C. 313 (1816).

The person who presents a bill for payment must produce it, and must be ready and willing to deliver it upon receiving payment: section 109. As to the hour of presentment, see notes to section 78.

91. Delay in Presentment.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

2. Diligence.—When the cause of delay ceases to operate, presentment must be made with reasonable diligence. 53 V., c. 33, s. 46. Eng. s. 46.

As to causes excusing delay, cf. sec. 105 (notice of dishonour) and sec. 111 (protest).

As to the cases in which presentment for payment is dispensed with, see sec. 92.

The death of the holder just before the bill matures, *Rothschild vs. Currie* (1841), 1 Q. B. 47, a state of siege or war rendering presentment impracticable, *Patience vs. Townley* (1805), 2 Smith 223, and delay in transmission through the Post Office, where it was mailed in ample time, *Pier vs. Heurichschoffer* (1877), 29 Amer. R. 501, have been held to excuse delay. If presentment is delayed at the request of the drawer or indorser sought to be charged, the delay is presumably excused: *Burnett vs. Monaghan*, 1 R. C. 473 (1871).

92. Dispensed with—Impracticable—Fictitious Drawee—Useless—Accommodation Bill—Waiver.—Presentment for payment is dispensed with,—

(a) where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected;

(b) where the drawee is a fictitious person,

(c) as regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;

(d) as regards an endorser, where the bill was accepted or made for the accommodation of that endorser, and he has no reason to expect that the bill would be paid if presented;

(e) by waiver of presentment, express or implied.

Robertson vs. N. W. Register Co., 19 Man. L. R. 402 (K. B.).

See section 85.

2. Not Dispensed With.—The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment. 53 V., c. 33, s. 46. Eng. s. 46.

Causes which dispense with presentment must be distinguished from causes which merely excuse delay.

Cf. secs. 107 and 108, *infra*. and notes, as to dispensing with notice of dishonour. Cf. sec. 106 as to waiver of notice of dishonour.

As to express stipulation in the bill waiving some or all of the holder's duties, see sec. 34.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment;

When the drawer is a fictitious or an incapable person, the holder may treat the instrument as a promissory note; section 26.

The fact that the drawee is a person not having capacity to contract does not excuse presentment for payment unless the case falls within the next clause, though it does excuse presentment for acceptance, see section 79 (a).

A bill accepted for the accommodation of the drawer need not be presented in order to charge him where he has not provided funds to meet it, but should be presented to charge the indorsers: *Knapp vs. Bank of Montreal*, 1 L. C. R. 252 (1850).

Prior indorsers are not liable without presentment: *Turner vs. Samson*, 2 Q. B. D. 23 (1876).

Waiver is binding without consideration. It may be either before or after the time for presentment in writing, or verbal, or inferred from conduct or circumstances. As to express waiver, see section 34 (b).

Waiver of notice of dishonour does not include a waiver of presentment for payment: *Hill vs. Heap* (1823), D. and R. N. P. C. 57.

As to presentment for payment, see section 85, and as to when it is excused, section 91. As to when a bill is overdue, see sections 23 and 43.

Newton vs. Kusson, 7 W. W. R. 726.

A promise to pay a note after due date with knowledge of the facts (non-presentment for payment) operates as a waiver of such non-payment.

Newton vs. Husson, 20 D. L. R. 617; 30 W. L. R. 99.

Waiver of presentment of a promissory note at the place of payment is shewn by an oral promise made by the maker after the note fell due to make payments on it at specified times as admitted in his examination on discovery.

Ayer vs. Murray, 39 N. B. R. 170.

An offer made after its maturity by an endorser of a promissory note to pay the amount of the same will not operate as a waiver of presentment in the absence of evidence that at the time of the offer he knew there had been default in presentment.

93. When no Place Specified.—When no place of payment is specified in the bill or acceptance, presentment for payment is not necessary in order to render the acceptor liable.

2. If Place Specified—Neglect.—When a place of payment is specified in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures, but if any suit or action be instituted thereon before presentation the costs thereof shall be in the discretion of the court.

3. Delivery on Payment.—When a bill is paid the holder shall forthwith deliver it up to the party paying it. 53 V., c. 33, s. 52. Eng. s. 52.

When a bill is accepted payable at a particular place, and there only, the acceptor's position is for many purposes analogous to that of the drawer of the cheque: *Ramchurn Mullick vs. L. Radakissen* (1854), 9 Moore P. C., at p. 70. If, then, he could show that he was damaged by the holder's omission to present on the proper day, he would probably be discharged: *Cf. Alexander vs. Burchfield* (1842), 7 M. & Gr 1061. But see as to this *Falconbridge*, p. 506; *Ibid.*, as to the difference between the provisions of the Canadian and English Acts.

The drawers and endorsers are entitled to have the bill presented for payment; sec. 85. Cf. secs. 88 to 90.

94. Time for Presentment.—Where the address of the acceptor or for honour of a bill is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity.

2. Parties in Different Places.—Where the address of the acceptor for honour is in some place other than the place where it is protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

3. Excuses for Delay.—Delay in presentment or non-presentment is excused by any circumstance which would in case of acceptance by a drawee excuse delay in presentment for payment or non-presentment for payment. 53 V., c. 33, s. 66. Eng. s. 67.

As to circumstances which would excuse delay in presentment for payment or non-payment for payment to the drawee, see secs. 91 and 92.

As to acceptance for honour, see secs. 47 to 152.

DISHONOUR.

95. Non-Payment on Presentment—Excuse.—A bill is dishonoured by non-payment,—

(a) when it is duly presented for payment and payment is refused or cannot be obtained; or,

(b) when presentment is excused and the bill is overdue and unpaid.

2. **Recourse.**—Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer, acceptor and endorsers accrues to the holder. 53 V., c. 33, s. 47. Eng. s. 47

As to due presentment, see sec. 86.

As to the cases in which presentment is excused, see sec. 92.

Sections 81 and 82 deal with dishonour by non-acceptance.

The provisions of the Act referred to in this section are sections 96 to 113, and 147 to 155.

As a general rule the holder's right of *action* against a drawer or indorser dates from the time when notice of dishonour is or ought to be received, and not from the time when it is sent, *Cas-trique vs. Bernabo* (1844), 2 Q. B. 49, and in any case there is no right of action till the day after dishonour. The right of recourse must be distinguished from the right of action: *Kennedy vs. Thomas* (1894), 2 Q. B. 759 C. A. An action instituted in the afternoon of the last day of grace, after dishonour, is premature: *Demers vs. Rousseau*, Q. R., 1 S. C. 440 (1892). *Cf. Sinclair vs. Robson*, 1858, 16 U. C. R., 211, and *Edgar vs. Magee*, 1882, 1 O. R. 287; and see Falconbridge at pp. 510 *et seq.*, for a discussion of the cases.

In Quebec the insolvency of the acceptor before the maturity of the bill makes it immediately exigible as against him. *Ontario Bank vs. Foster*, 6 L. N. 398 (1883), but not as against an indorser. *Guilbault vs. Migue*, 20 R. L. 597 (1891). Prescription does not, however, begin to run until the time fixed for the maturity of the bill: *Whitley vs. Pinkerton*, Q. R., 2 S. C. 256 (1892).

Where the acceptance is conditional, the condition must be fulfilled or the acceptor is not liable: *Dufresne vs. Jacques Cartier Building Society*, 5 R. L. 235 (1873).

In an action on a bill or note payable at a particular place, it is not necessary to show that there was not sufficient funds at the place named; all that is necessary, even as against an indorser is to show presentment, non-payment and notice of dishonour: *McDonald vs. McArthur*, 8 Ont. A. R. 553 (1883).

Trudeau vs. Laurin, 16 Que. P. R. 111.

The endorser of a promissory note cannot by a dilatory exception, stop the action of the holder in due course, in order to call in warranty his subsequent co-endorsers who have themselves been summoned as co-defendants jointly and severally.

Heughan vs. Short and Binder, 6 O. W. N. 545.

Promissory note—action against endorser—absence of presentment and notice of dishonour—waiver—conduct—note made by company—evidence—assignment by company for benefit of creditors—relation of endorser to company.

96. Notice of Dishonour—Subsequent Holder—Notice of Non-Payment.—Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer, and each endorser, and any drawer or endorser to whom such notice is not given is discharged: Provided that,—

(a) where a bill is dishonoured by holder in due course subsequent to the omission shall not be prejudiced by the omission;

(b) where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

2. Notice to Acceptor.—In order to render the acceptor of a bill liable it is not necessary that notice of dishonour should be given to him. 53 V., c. 33, ss. 48 and 52. Eng. ss. 48 and 52.

As to dishonour by non-acceptance, see sec. 81, and by non-payment, see sec. 95.

As to holder in due course, see sec. 56.

Secs. 97, *et seq.*, contain the rules regarding the time and manner of giving notice of dishonour, the persons by whom and to whom it should be given, and the persons for whose benefit it enures.

Delay in giving notice may be excused (sec. 105) and notice may be dispensed with (secs. 106 to 108) under certain circumstances.

Union Invest. Co. vs. Wells, 39 Can. S. C. R. 625.

See sec. 58.

97. Notice—Time for—By Holder or Endorser—Personal Representative—Two Drawers.—Notice of dishonour in order to be valid and effectual must be given,—

(a) Not later than the juridical or business day next following the dishonour of the bill:

(b) By or on behalf of the holder, or by or on behalf of an endorser who, at the time of giving it, is himself liable on the bill;

(c) In the case of the death if known to the party giving notice of the drawer or endorser to a personal representative, if such there is, and with the exercise of reasonable diligence, he can be found;

(d) In case two or more drawers or endorsers, who are not partners to each of them, unless one of them has authority to receive such notice for the others. 53 V., c. 33, s. 49. Eng. s. 49 (1), (9), (11), (12).

The English Act requires notice to be given "within a reasonable time" after dishonour. The Canadian Act allows no latitude beyond the next juridical or business day (secs. 2 and 43), but any hardship in this respect is avoided by the provisions of sec. 103.

See Falconbridge, pp. 516 *et seq.* where the differences between the two acts are discussed.

See *Hough vs. Kennedy*, 3 Alta. R. 114.

Cited under sec. 55.

Massey-Harris Co. vs. Baptiste, 32 W. L. R. 435; 24 D. L. R. 753.

The joint maker of a lien note given for the sale of a plan purchased by another is not entitled to notice of default of the principal obligor in order to hold him liable on the note. (Followed in *Crown Life Ins. Co. vs. Clarke*, 25 D. L. R. 519; 9 A. L. R. 97).

98. Notice—Earliest Time—to whom—By Agent—Manner.

—Notice of dishonour may be given,—

(a) As soon as the bill is dishonoured;

(b) To the party to whom the same is required to be given or to his agent in that behalf;

(c) By an agent either in his own name, or in the name of any party entitled to give notice, whether that party is his principal or not;

(d) In writing or by personal communication, and in any terms which identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment;

2. Misdescription.—A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in act misled thereby. 53 V., c. 33, s. 49. Eng. s. 49 (2), (5), (7), (8), (12).

Notice must be given not later than the juridical or business day next following the dishonour of the bill (sec. 97).

As to form, see also sec. 99. Notices of dishonour are construed very liberally see *c. g., Counsell vs. Livingstone*, 1902, 2 O. L. R. 582, 4 O. L. R. 340, and cases there cited.

A notice to the drawer which describes the bill as payable at the "S. Bank," when in fact it was payable at the "T. Bank," *Bromage vs. Vaughan* (1846), 16 L. J. Q. B. 10; or which describes a bill of exchange as a note, *Stockman vs. Parr* (1843), 11 M. & W. 809; or which transposes the names of drawer and acceptor, *Mellersh vs. Rippen* (1852), 7 Exch. 578; or which describes the acceptor by a wrong name, *Harpham vs. Child* (1859), 1 F. & F. 652, may be sufficient.

The agent should be some person designated for that purpose by the party, or in charge or employed at his office, or representing him at his residence. A verbal or written notice of dishonour given to or left with a clerk at the drawer or indorser's place of business, *Allan vs. Edmundson* (1848), 2 Exch. 724 or given to the wife of the drawer at his house during his absence, *Housego vs. Cowne* (1837), 2 M. & W. 348, were held sufficient; it being the duty of the drawer or indorser of a bill if he be absent from his place of business or residence to see that there is some person there to receive notice on his behalf.

99. Form—Return of Bill—Signature.—In point of form,—

(a) the return of a dishonoured bill to the drawer or an endorser is a sufficient notice of dishonour;

(b) a written notice need not be signed.

2. Verbal Supplement.—An insufficient written notice may be supplemented and validated by verbal communication. 53 V., c. 33, s. 49. Eng. s. 49 (6), (7).

As to form of notice, cf. sec. 98.

Clause (a) approves a common practice of collecting bankers which was previously of doubtful validity. Chalmers, p. 161.

It is not a prudent practice, however, to hand over to the person liable the chief evidence of his liability.

A written notice need not be signed, but it must come from a person entitled to give notice (secs. 97 and 98).

100. Notice to Agent—Effect on Principal.—Where a bill when dishonoured is in the hands of an agent he may himself give notice to the parties liable on the bill, or he may give notice to his principal, in which case the principal upon receipt of the notice shall have the same time for giving notice as if the agent had been an independent holder.

2. Time for.—If the agent gives notice to his principal he must do so within the same time as if he were an independent holder. 53 V., c. 33, s. 49. Eng. s. 49 (13).

101. Notice to Antecedent Parties.—Where a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after dishonour. 53 V., c. 33, s. 49. Eng. s. 49 (14).

Cf. sec. 100.

The holder must give notice not later than the juridical or business day next following the dishonour of the bill (sec. 97).

As to persons for whose benefit the notice accrues, see sec. 101.

If the holder, according to the usual custom in Canada, gives notice to all parties, he must give notice to a remote party within the same time as is limited for giving notice to an immediate party: Cf. sec. 97.

102. Benefit Enures—Parties to Whom.—A notice of dishonour enures for the benefit,—

(a) Of all subsequent holders and of all prior endorsers who have a right or recourse against the party to whom it is given, where given on behalf of the holder.

(b) Of the holder and of all endorsers subsequent to the party to whom notice is given, where given by or on behalf of an endorser entitled under this part to give notice. 53 V., c. 33, s. 49. Eng. s. 49 (3), (4).

A notice of dishonour may be given by or on behalf of the holder, or by or on behalf of an endorser who, at the time of giving it is himself liable on the bill (sec. 97).

103. Sufficiency of Giving.—Notice of the dishonour of any bill payable in Canada shall, notwithstanding anything in this

Act contained be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence or at the place at which such bill is dated, unless any such party has, under his signature, designated another place, in which case such notice shall be sufficiently given if addressed to him in due time at such other place.

Rosenberg vs. Johnson, Q. R. 40 S. C. 511 (Rev.).

Where the indorser of a note, payable to order, under his signature of indorsement, writes his address, indicating the city, the street and the number thereof, notice of protest for non-payment of the note must be mailed to him at the address thus indicated. When the indorser had written, under his signature "No. 204 St. James St., Montreal," a notice of protest addressed "H. T. J., Montreal," is insufficient.

2. Sufficiency of Notice.—Such notice so addressed shall be sufficient, although the place of residence of such party is other than either of the places aforesaid, and shall be deemed to have been duly served and given for all purposes if it is deposited in any post-office, with the postage paid thereon, at any time during the day on which presentment has been made, or on the next following juridical or business day.

3. Death of Party.—Such notice shall not be invalid by reason only of the fact that the party to whom it is addressed is dead. 53 V., c. 33, s. 49.

This section is not in the English Act: see notes to sec. 97.

See also sec. 104.

In Canada if the bill is not dated at any place, and the actual or customary address or place of business of the endorser or person to receive notice, is not known to the holder, or other person who has to give notice, the latter must exercise due diligence to find the endorser. If by due diligence the holder cannot give notice within the time limited by sec. 97, the delay in giving notice is excused (see notes to sec. 106).

104. Miscarriage in Post Service.—Where a notice of dishonour is duly addressed and posted, as provided in the last preceding section, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post-office. 53 V., c. 33, s. 49. Cf. Eng. s. 49 (15).

It lies on the sender to prove that the letter containing the notice was duly addressed and posted: *Hawkes vs. Salter* (1828), 4 Bing. 715. The sufficiency of the direction on the letter is a question of reasonable diligence (Chalmers, p. 155.)

Indorsers who may wish to look to prior parties should be careful to see (1) that their proper address is given, and (2) that notice of dishonour has been given to such prior parties, and if not to give it themselves within the legal delay (Maclaren).

105. Excuse for Delay.—Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct or negligence.

2. **Diligence.**—When the cause of delay ceases to operate the notice must be given with reasonable diligence. 53 V., c. 33, s. 50. Eng. s. 50.

If an indorser gives wrong address, delay caused by his doing so would be excused, *Hewitt vs. Thompson* (1836), 1 M. & Robb, 541; and if the holder does not know an indorser's address, delay occupied in making inquiries would be excused: *Baldwin vs. Richardson* (1823), 1 B. & C. 245.

When the delay is caused by the party to whom notice is sent, he cannot give an effectual notice to antecedent parties, but is liable himself: *Cf. Shetton vs. Braithwait* (1841), 8 M. & W. 254.

As to causes excusing delay, cf. sec. 91 (presentment for payment), sec. 111 (protest). See also sec. 104.

106. Dispensed with—Reasonable Diligence—Waiver.—Notice of dishonour is dispensed with.

(a) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or endorser sought to be charged.

(b) by waiver express or implied;

2. **Time of.**—Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice. 53 V., c. 33, s. 50. Eng. s. 50.

Waiver of notice of dishonour in favour of the holder enures for the benefit of parties prior to such holder as well as subsequent holders: *Rabey vs. Gilbert* (1861), 30 L. J. Ex. 70. Waiver of notice of dishonour by an indorser does not affect parties prior to such indorser: *Turner vs. Leech* (1821), 4 B. & Ald. 451.

An acknowledgment of liability must be made with full knowledge of the facts in order to operate as a waiver of notice of dishonour: *Goodhall vs. Dolley* (1787), 1 T. R. 712. Thus, a bill is refused payment at maturity. The indorser promises the holder to pay it, not knowing that it had been previously dishonoured by non-acceptance. This is no waiver. Again, a waiver of notice of dishonour may not include a waiver of resentment for payment. *Keith vs. Burke* (1885), 1 C. & E. 551.

Martin Hargreaves Co. vs. Wrigley, 30 W. L. R. 92.

Held, under s. 106, sub-s. (b) 2. of the Bills of Exchange Act, that an endorser of a promissory note who, being aware of an omission to give him due notice of dishonour, gives a written promise to pay the note, thereby waives the notice and is liable on the note.

In the United States it has been held that verbal waiver of notice may be revoked before the time for giving notice has expired: *Second National Bank vs. Maguire* (1877), 31 Amer. R. 539.

The words "I hold myself responsible for my note" indorsed upon a promissory note, amounts to waiver of protest, and a declaration alleging this fact is sufficient in law. *Ranger vs. Aumis*, 5 Que., P. R. 450.

The curator to a *session de biens* has no authority to waive the protest of a note of which the insolvent is endorser. *Molsons Bank vs. Steele*, Q. R. 23, S. C. 316.

The curator appointed upon an abandonment of property under the Code of Procedure has no authority, without leave of a judge

of the Superior Court or the advice of the creditors or inspectors, to waive on behalf of the insolvent, protest of a promissory note indorsed by him and a waiver under such circumstances does not bind the indorser. (2) The right of renunciation is a personal one belonging to the indorser. *Denenberg vs. Mendelsohn*, 22 Que. S. C. 474 affirmed in the Court of Review, 23 Que. S. C. 128.

107. Dispensed with—Same Person—Fictitious Person—Presented to Drawer—No Obligation—Countermand.—Notice of dishonour is dispensed with as regards the drawer where,—

- (a) Where the drawer and drawee are the same person;
- (b) The drawee is a fictitious person or a person not having capacity to contract;
- (c) The drawer is the person to whom the bill is presented for payment;
- (d) The drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill;
- (e) The drawer has countermanded payment. 53 V., c. 33, s. 50. Eng. s. 50.

See notes to sec. 106.

As to the meaning of fictitious person, cf. notes to sec. 21.

As to clauses (a) and (b), cf. sec. 26.

Prima facie the acceptor, as between himself and the drawer, is the person bound to pay the bill, but evidence is admissible to show that he is in reality a mere surety for the drawer or some other party. *Cook vs. Lister* (1863), 32 L. J. C. P. at p. 127.

Hough vs. Kennedy (1910), 13 W. L. R. 674 (Alberta Court of Appeal) Judgment of Noel, C. J., reversed.

In an action by the payee of a promissory note against the two joint makers, it appeared that the defendant D. signed as maker entirely for the accommodation of the defendant K., and without receiving any consideration therefor, and that the plaintiff knew at the time of taking the note that D. was an accommodation maker only. The plaintiff placed the note with his bankers as collateral security for his indebtedness to them, and the bankers indorsed upon it the words "extended for 9 months." D. was not notified of this extension. There was no evidence that the time was extended for K.'s benefit, either by the bankers or the plaintiff, or that K. was ever informed by either of them that he could have 9 months more in which to pay.

Held, that D. was not released by the extension of time without notice to him.

Held, also, that D., as an accommodation maker to the knowledge of the plaintiff, was not entitled under the law Merchant or the Bills of Exchange Act to notice of dishonour.

The note fell due on the 20th October, 1907; the plaintiff took no proceedings against D. or K. until more than 14 months after that date; D. was never notified that the note had not been paid until the 6th October, 1908, at some time,—the evidence did not shew when,—K. made an assignment for the benefit of his creditors; the evidence did not shew whether the plaintiff proved his claim against the estate or not, or whether D. might not have done so and ob-

tained some benefit, if he had known that K. had not paid the note:—

Held, that there should be a new trial so as to give D. an opportunity of proving that he was in some way prejudiced by the omission to notify him of K.'s default—the position being that the plaintiff, the creditor, had failed to proceed promptly against K., the principal debtor, and failed to give D. the surety, notice of K.'s default, and upon these facts, if damage were shewn, D. would be discharged from his liability.

Kalmet vs. Kaiser, 13 W. L. R. 94, as to granting a new trial, distinguished.

See Quebec Civil Code, Art. 1959.

See sec. 49.

108. Dispensed with—Fictitious Person—Presented to Endorser—Accommodation.—Notice of dishonour is dispensed with as regards the endorser where,—

(a) Where the drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the bill;

(b) The endorser is the person to whom the bill is presented for payment;

(c) The bill was accepted or made for his accommodation. 53 V., c. 33, s. 50. Eng. s. 50.

See notes to secs. 106 and 107.

Notice of dishonour is not dispensed with because presentment is dispensed with, or because the drawer or endorser has reason to believe the bill will not be paid, or because the acceptor is dead and no representative can be found: *Carew vs. Duckworth*, L. R. 4 Ex. 319 (1869); *Caunt vs. Thompson*, 7 C. B. 400 (1849); or because the drawer or indorser is dead: section 49 (1) (Maclaren).

Liability of persons not parties.—The liability of persons who are not parties to a bill, but who may be guarantors of the bill or some of the parties to it, or who may be liable on the consideration for which the bill is given, is not affected by the act, but will remain subject to the laws in force in the several provinces (Maclaren).

A person who has given a guarantee for the payment of a bill is liable without notice of dishonour, *Palmer vs. Baker*, 22 U. C. C. P. 59 (1871); also if he guarantees the payment of the price of goods for which the bill is given, *Anderson vs. Archibald*, 9 N. S. (3 G. & O.), 88 (1872) or probably, if he is liable on the consideration for the bill (Chalmers, p. 170, and cases there cited); but if the goods are for the drawer of the bill the guarantor is entitled to notice: *Phillips vs. Astling*, 2 Taunt. 206 (1809).

As to those who have placed their names on bills in Quebec "pour aval" or as warrantors elsewhere, see section 131.

PROTEST.

109. Necessity of.—In order to render the acceptor of a bill liable it is not necessary to protest it. 53 V., c. 33, s. 52. Eng. s. 52.

The acceptor of a bill is not entitled to notice of dishonour

(sec. 96). The same rule in regard to protest and notice of dishonour applies to the maker of a note (sec. 186) as to the acceptor of a bill.

As to drawer and endorsers, see secs. 112 to 114.

110. Dispensed with.—Protest is dispensed with by any circumstances which would dispense with notice of dishonour. 53 V., c. 33, s. 51. Eng. s. 51.

See secs. 106 to 108.

111. Delay Excused.—Delay in noting or protesting is excused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

2. Diligence.—When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. 53 V., c. 33, s. 51. Eng. s. 51.

As to excuse for delay, cf. sec. 91 (presentment for payment) and sec. 105 (notice of dishonour).

112. Foreign Bill, Non-Acceptance.—Where a foreign bill appearing on the face of it to be such has been dishonoured by non-acceptance, it must be duly protested for non-acceptance.

2. Non-Payment.—Where a foreign bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment.

3. Balance.—Where a foreign bill has been accepted only as to part it must be protested as to the balance.

4. Discharge.—If a foreign bill is not protested as by this section required the drawer and endorsers are discharged. 53 V., c. 33, ss. 44 and 51. Eng. ss. 44 and 51.

See foreign bill defined by section 25. Foreign notes as well as bills should be protested in order to bind the endorsers: section 186. By section 109 protest is not necessary in order to charge the acceptor of a bill.

113. Protest of Inland Bill—Quebec.—Where an inland bill has been dishonoured it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment, as the case may be; but it shall not, except in the Province of Quebec be necessary to note or protest an inland bill in order to have recourse against the drawer or indorsers. 53 V., c. 33, s. 51. Cf. Eng. s. 51.

By section 165 this provision applies to cheques, and by section 186 to promissory notes. By section 134 (c) the expenses of noting can be recovered as liquidated damages.

The protesting of inland bills for non-acceptance or for better security, elsewhere than in Quebec, is only compulsory as a preliminary to an acceptance *supra* protest for honour, section 147, and a protest for non-payment, only as a preliminary to presentment for payment to the acceptor for honour, or referee in case of need; section 117.

114. Discharge in Default of Protest.—In the case of an inland bill drawn upon any person in the Province of Quebec or payable or accepted at any place in the said province, the parties liable on the said bill other than the acceptor are, in default of protest for non-acceptance or non-payment as the case may be, and of notice thereof, discharged, except in cases where the circumstances are such as would dispense with notice of dishonour.

2. Protest Unnecessary.—Except as in this section provided, where a bill does not on the face of it appear to be a foreign bill, protest thereof in case of dishonour is unnecessary. 53 V., c. 33, s. 51. Cf. Eng., s. 51.

In Quebec as in the other provinces and in England, it is not necessary to protest a bill in order to render the acceptor liable (sec. 109).

As against other parties, there must in Quebec be protest and notice of protest unless these are dispensed with. (Cf. secs. 106 to 108 as to dispensing with notice of dishonour).

In the other provinces, the English rule prevails, and any bill which does not appear on its face to be a foreign bill need not be protested. The Canadian Act, unlike the English Act, expressly recognizes the propriety of the protest of any dishonoured bill (sec. 113).

115. Subsequent Protest for Non-Payment.—A bill which has been protested for non-acceptance or a bill of which protest for non-acceptance has been waived, may be subsequently protested for non-payment. 63 V., c. 33, s. 51. Eng. s. 51.

Protest in the cases provided for in this section might be necessary for the purpose of charging a foreign drawer or endorser in his own country. Generally, however, the duties of the holder would be regarded as regulated by the law of the place where they are to be performed (cf. sec. 162; Chalmers, p. 175).

116. Protest for Better Security.—Where the acceptor of a bill suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers. 53 V., c. 33, s. 51; 54-55 V., c. 17, s. 7. Eng. s. 51.

In Quebec, a bill becomes immediately exigible upon the insolvency of the acceptor before maturity. The provisions of the Act in regard to presentment for payment, protest and notice then become applicable and must be observed in order to bind an endorser. (*Banque Nationale vs. Martel* (1899), Q. R. 17 S. C. 97).

117. Acceptance for Honour.—Where a dishonoured bill has been accepted for honour *supra* protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

2. Protest for Non-Payment.—When a bill of exchange is dishonoured by the acceptor for honour, it must be protested for non-payment by him. 53 V., c. 33, s. 66. Eng. s. 67.

It is in the option of the holder to resort to the referee in case of need or not, as he may think fit (sec. 33).

As to the nature and effect of acceptance for honour, see secs. 147 to 152.

118. Noting Equivalent to Protest.—For the purposes of this Act, where a bill is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding. 53 V., c. 33, s. 92. Eng. s. 93.

119. Noting or Protest.—Subject to the provisions of this Act, when a bill is protested the protest must be made or noted on the day of its dishonour;

2. Extending Protest.—When a bill has been duly noted, the formal protest may be extended thereafter at any time as of the date of the noting. 53 V., c. 33, ss. 51 and 92. Eng. ss. 51 and 93.

As to the extension of the protest, cf., sec. 118.

Although the protest may be extended "thereafter at any time," notice of dishonour, or, where protest is necessary, notice of protest, must be sent within the time limited by sec. 97 or sec. 126 (as the case may be).

Notice of protest is governed by the same rules as notice of dishonour in regard to time and manner of giving notice (sec. 126).

120. Protest on Copy or Particulars.—Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof. 53 V., c. 33, s. 51. Eng. s. 51.

As to lost bills, see further sec. 156 and sec. 157.

Ross vs. Reid, 42 N. S. R. 232.

See sec. 18, subsection 2.

121. Place of Protest—Where Bill Returned—Time When.—A bill must be protested at the place where it is dishonoured, or at some other place in Canada situate within five miles of the place of presentment and dishonour of such bill: Provided that,—

(a) When a bill is presented through the post-office, and returned by post dishonoured, it may be protested at the place to which it is returned, not later on the day of its return or the next juridical day;

(b) Every protest for dishonour, either for non-acceptance or non-payment; may be made on the day of such dishonour and in case of non-acceptance at any time after non-acceptance, and in case of non-payment, at any time after three o'clock in the afternoon. 53 V., c. 33, s. 51. Cf. Eng. s. 51.

As to juridical days, see sec. 43.

122. Contents of Protest—Person—Place—Reason—Proceeding—Excuse.—A protest must contain a copy of the bill, or the

original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify,—

- (a) the person at whose request the bill is protested;
- (b) the place and date of protest;
- (c) the cause or reason for protesting the bill;
- (d) the demand made, and the answer given, if any; or
- (e) the fact that the drawee or acceptor could not be found.

53 V., c. 33, s. 51. Eng. s. 51.

As to form of protest, cf. sec. 125 and schedule.

123. Official when Notary is not Accessible.—Where a dishonoured bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any justice of the peace resident in the place may present and protest such bill and give all necessary notices and shall have all the necessary powers of a notary in respect thereto. 53 V., c. 33, s. 93. Cf. Eng. s. 94.

124. Expenses.—The expense of noting and protesting any bill and the postage thereby incurred shall be allowed and paid to the holder in addition to any interest thereon:

2. **Fees.**—Notaries may charge the fees in each province heretofore allowed them. 53 V., c. 33, s. 93.

125. Forms.—The forms in the schedule to this Act may be used in noting or protesting any bill and in giving notice thereof.

2. **Contents.**—A copy of the bill and endorsement may be included in the forms, or the original bill may be annexed and the necessary changes in that behalf in the forms. 53 V., c. 33, s. 93. Cf. Eng. s. 94.

As to sub-sec. 2, cf., sec. 122.

The forms in the schedule are not obligatory. As to form of notice of dishonour, see notes to sec. 96.

126. When Notice of Protest shall be Given.—Notice of the protest of any bill payable in Canada shall be sufficiently given and shall be sufficient and deemed to have been duly given and served if given during the day on which protest has been made or on the next following juridical or business day, to the same parties and in the same manner and addressed in the same way as is provided by this part for notice of dishonour. 53 V., c. 33 s. 49.

Subject to the provisions of the Act, protest must be made or noted on the day of the dishonour of a bill (sec. 119).

As to the persons to whom notice must be given, see sec. 96. As to the manner, see secs. 98 and 99. As to the manner in which the notice is to be addressed, see secs. 103 and 104.

127. Equitable Assignment.—A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. 53 V., c. 33, s. 53, Eng. s. 50.

A bill of exchange is an unconditional order in writing, but an order to pay out of a particular fund is not unconditional and therefore such an order is not a bill (sec. 17).

Subject to the rule that a customer is entitled to draw cheques on his banker, a creditor as such, is not entitled to draw on his debtor in respect of his debt; and the drawee of an unaccepted bill of exchange is under no obligation to accept or pay it unless he has for valuable considerations expressly or impliedly agreed to do so: Chitty, p. 200. *Cf. Goodwin vs. Roberts* (1875), L. R. 10 Ex. at p. 351.

It is usual, but not necessary, for the drawer to advise the drawee of drafts drawn on him by letter of advice: *Arnold vs. Cheque Bank* (1876), 1 C. P. D. 586. If, says Story, section 156, a bill is drawn "as per advice," then the drawee is not bound to accept or pay without such advice, and if he does it is at his own peril.

When the drawee contracts with the drawer to accept his draft, and dishonours it, the consequences reasonably resulting from the breach of contract constitute the measure of damage: *Prehn vs. Royal Bank of Liverpool* (1870), L. R. 5 Ex. 92.

128. Engagement by Acceptance.—The acceptor of a bill, by accepting it, engages that he will pay it according to the tenor of his acceptance. 53 V., c. 33, s. 54. Eng. s. 54.

See section 35 as to form of valid acceptance, section 38 as to general and qualified acceptances, and sec. 93, as to presentment to charge acceptor. As to variation of the acceptor's liability by *ex post facto* legislation, *e. g.*, a French "*loi moratoire*," see *Rouquette vs. Overmann* (1875), L. R., 10 Q. B. 525. As to measure of damages, see section 134. The drawee of a bill by accepting it becomes the party primarily liable thereon to the holder. See the primary, and in general, absolute, liability of an acceptor distinguished from the secondary and conditional liability of a drawer or endorser by Bayley, J., in *Rowe vs. Young* (1820), 2 Bligh H. L. at p. 467. As to the relations *inter se* of joint acceptors who are not partners, see per Wilde, C. J., in *Harmer vs. Steele* (1849), 4 Ex. Ch. 13.

Drawees who have promised to accept, or who have knowingly accepted the benefit of funds obtained on a representation that they would accept, have been held liable: *Torrance vs. Bank of British North America*, L. R., 5 P. C. (1873); *Bank of Montreal vs. Thomas*, 16 O. R. 503 (1888).

See section 52 as to an acceptor signing as an agent or in a representative character.

129. Estoppel—Genuineness and Authority—Capacity of Drawer—Payee and Capacity.—The acceptor of a bill by accepting it is precluded from denying to a holder in due course,—

(a) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(b) in the case of a bill payable to drawer's order, the then capacity of the drawer to endorse, but not the genuineness or validity of his endorsement;

(c) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to endorse, but not the genuineness or validity of his endorsement. 53 V. c. 33, s. 54. Eng. s. 54.

This section deals only with estoppels arising on the bill. There may, of course, be other estoppels arising on evidence. See section 49, which is modified by this section.

If the bill be materially altered the acceptor is not precluded from setting this up: *White vs. Central National Bank* (1876), 64 New York R. 316, and see section 145. But where a bank issued a draft for \$25.00 on one of its branches without advice, and the holder raised it to \$5,000 and deposited it with another bank which drew the money, and the forgery was discovered six days later, it was held that the bank which had paid could not recover: *Union Bank vs. Ontario Bank*, 2 L. N. 386, 24 L. C. J. 309 (1880).

The acceptor may, of course, decline to pay on the ground that the payee's signature has been forged, or his signature not authorized. If, however, the payee be a fictitious person, the holder is entitled to treat the bill as if drawn payable to bearer. See section 21 (5) and notes thereon.

Connell vs. Shaw, 39 N. B. R. 267.

See sec. 129.

130. Drawer Engages Acceptance and Compensation—Estoppel as to Payee.—The drawer of a bill, by drawing it,—

(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or any endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;

(b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse. 53 V. c. 33, s. 55. Eng. s. 55.

As to due presentment, see sec. 78 (for acceptance) and sec. 86 (for payment).

As to dishonour, see secs. 81 and 95.

As to the requisite proceedings on dishonour, see sec. 96 (notice of dishonour) and secs. 112 to 114 (protest).

As to the holder in due course, see sec. 56.

As to the measure of damages, see sec. 135.

The drawer and any endorser may insert in the bill an express stipulation negating or limiting his own liability to the holder (sec. 34).

The drawer and any endorser may insert in the bill an express or co-surety with those who are sureties for the acceptor, yet he stands in a position sufficiently analogous to that of a surety to entitle him to the equities of a surety when the bill has been dishonoured, though not before. (*Duncan For & Co. vs. N. & S. Wales Bank* (1880), 6 App. Cas. 1, at p. 19, where the relations *inter se* of drawer or endorser, acceptor and holder are discussed).

If a bill is dishonoured and the requisite proceedings on dishonour are taken, *prima facie* the drawer or an endorser of a bill (sec. 133) is liable to the holder or to any endorsee who is compelled to pay the bill.

Subject to the provisions of sec. 21, as to a fictitious or non-existing payee, the drawer is not estopped from denying the genuineness or validity or the payee's signature. Cf. notes to sec. 129.

131. Liability by Signature—Irregular Endorsement.—No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such: Provided that when a person signs a bill otherwise than as a drawer or acceptor he thereby incurs the liabilities of an endorser to a holder in due course and is subject to all the provisions of this Act respecting endorsers. 53 V., c. 33, ss. 23 and 56. Eng. ss. 23 and 56.

By sec. 4 the signature to a bill may be written by the hand of an agent, but it must be the principal's signature, not the agent's. In the case of a corporation, a bill is sufficiently signed if it is sealed with the corporate seal (sec. 5).

Setchfield vs. Evans (1909), 1 O. W. N. 62.

Held, that the defendant is the maker of the note in the position of a guarantor.

As to the liabilities of an endorser, see sec. 133 and notes. Under sec. 131 a person who signs a bill otherwise than as drawer or acceptor, if he is not an endorser properly so-called, is liable as an endorser only to a holder in due course.

An endorsement, properly so-called, must be made by the holder; but when a person who is not the holder of a bill or note backs it with his signature, he is not an endorser, but a quasi-endorser. The law annexes to his acts consequences similar to those which follow the endorsement of a bill by the holder.

Since the passing of the Act, there has been considerable difference of judicial opinion as to the liability of a stranger to an instrument who signs his name on the back, before the payee has endorsed.

Nicholson vs. McKelvie, 5 D. L. R. 237, 41 Que. S. C. 340.

In Quebec, one who puts his name on the back of a note, before its delivery or endorsement by the payee is an endorser "*pour aval*," and is liable without notice of protest or dishonour. See cases cited.

In *Duthie vs. Essery* (1895), 22 A. R. 191, E. made two notes in favour of D. & Sons or order. K. endorsed them before delivery to the payees, who afterwards endorsed them for value to the plaintiff. In an action against K. it was held that the plaintiff as holder in due course was entitled to recover, the majority of the court basing their decision on sec. 131 of the Act.

In *Jenkins vs. Coomber* (1898), 2 Q. B. 168, the contrary decision was reached, and this case was followed in subsequent cases in Ontario. In *Robinson vs. Mann* (1901), 2 O. L. R. 63, 31 S. C. R. 484, it was held that a person signing his name on the back of a note before endorsement by the payee was liable. See also *Slater vs. Laboree* (1905), 10 O. L. R. 648, and *Falconbridge*, pp. 557 *et seq.*, where the cases are reviewed.

McDonough vs. Cook (1909), 19 O. L. R. 267 (Court of Appeal).

The plaintiff brought actions on two promissory notes, for \$6,000 and \$2,000 respectively, made by G. J. C. and W. C. K. as makers, and payable to the order of the plaintiff as payee. The notes were indorsed by the defendant, J. S. C., before they were delivered to the plaintiff, who subsequently indorsed them. The notes were given in renewal of a note for \$8,000 between the same parties, which also had been indorsed by the plaintiff subsequently to the indorsement by J. S. C. By a sealed agreement of the same date as the \$8,000 note (21st May, 1907), which was executed by J. S. C. and the other parties, it was stated that the note was given as security for the price of certain mining claims purchased by him in company with G. J. C. and W. C. K. from the plaintiff, and that J. S. C. was "the indorser of the note":—

Held, that J. S. C. was liable on the notes. *Per Osler and Mac-laren, JJ. A.*, that J. S. C. was liable to be plaintiff as "to a holder in due course" within the meaning of R. S. C. 1906, ch. 119, sec. 131. *Robinson vs. Mann* (1901), 31 S. C. R. 484, followed. J. S. C. was also liable to the plaintiff on the ground of estoppel, inasmuch as he was bound by the agreement of the 21st May, 1907, and it was not open to him to raise any defence based upon the irregular indorsement of the note. *Per Meredith, J. A.*, that, upon the evidence adduced, J. S. C. had an interest in the lands, as a principal as regards the plaintiff, and was liable to pay the contract price; and, even if his liability were only that of a surety for his co-defendants, the deed of the 21st May, 1907, was sufficient evidence of his contract under the Statute of Frauds.

132. Trade or Assumed Name.—Where a person signs a bill, in a trade or assumed name he is liable thereon as if he had signed it in his own name.

2. Firm Name.—The signature of the name of a firm is equivalent to the signature by the person so signing, of the names of s. 23.

The first part of this section should be read in conjunction with section 131. If an agent becomes a party to a bill or note in his own name his undisclosed principal cannot be made liable on the bill: *Adanson Co.*, 43 L. J. Ch., p. 734, but as between immediate parties he may nevertheless be liable on the consideration.

The persons liable under this sub-section are (1) working, (2) dormant or secret partners, *Pooley vs. Driver* (1876), 5 Ch. D. 458, and (3) those who, although not really partners, have held themselves out as such: *Gurney vs. Evans* (1858), 27 L. J. Ex. 166.

The partners in trading or commercial firms are presumed to have given each other authority to bind the firm by drawing, indorsing or accepting bills in the firm name for partnership purposes, but not otherwise. *Federal Bank vs. Northwood*, 7 C. R. 389 (1884), and after the bill gets into the hands of a holder in due course, the presumption of authority becomes absolute: *Henderson vs. Carveth*, 16 U. C. Q. B. 324.

In civil or non-trading partnerships there is no such presumption of authority. The partner who signs is bound, and so are his co-partners if they have authorized his act, or if they subsequently ratify it, but not otherwise: *Wilson vs. Brown*, 6 Ont. A. R. 411 (1881). The holder must show authority, actual or ostensible, to bind a non-trading firm (Lindley, 5th ed., p. 130). Partnerships, such as professional partnerships, mining partnerships, agricultural

partnerships, and commission agencies, have been held non-trading; but banking is a trading partnership (Chalmers, p. 69).

Where the name of a firm, and the name of one of the partners in it is the same, and that partner draws, indorses or accepts a bill in the common name, the signature is *prima facie* deemed to be the signature of the firm, if the firm carried on business and the individual does not, but the presumption may be rebutted by showing that the bill was not given for partnership purposes or under the authority of the firm: *Yorkshire Banking Co. vs. Beatson* (1880), 5 C. P. D. 109, C. A.

When a bill payable to the order of the firm is endorsed by a partner in the firm name in fraud of his co-partners, the property therein does not pass to an endorsee with notice: *Heilbut vs. Nevill* (1870), L. R. 5 C. P. 478, Ex. Ch.

The mandate and powers of the partners to bind the partnership by bill or note cease with its dissolution even though the bill or note be given in connection with a transaction begun before such dissolution. Such bills or notes would require special authority from the co-partners: *Bank of Montreal vs. Page*, 98 Ill. 110 (1881). But if a partner retires from the firm, and gives no notice of his retirement he is liable, on a bill accepted by the firm, subsequent to his retirement. (Pollock, p. 52; Lindley, 5th ed., p. 181).

See also *Drouin vs. Gauthier*, 12 K. B. (P. E.) 442.

133. Endorser—Engages Acceptance or Compensation—Genuineness and Regularity—Validity.—The endorser of a bill, by endorsing it, subject to the effect of any express stipulation hereinafter authorized,—

(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;

(b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements;

(c) is precluded from denying to his immediate or a subsequent endorsee that the bill was, at the time of his endorsement, a valid and subsisting bill, and that he had then a good title thereto. 53 V., c. 33, s. 55. (As amended by 7-8 Edw. VII., c. 8, s. 1). Eng. s. 55.

As to the liabilities and rights of successive endorsers of a bill in regard to notice of dishonour, see secs. 101 and 102.

The indorser of a bill in his relations with the holder is in the nature of a new drawer, *Steele vs. McKinley* (1880), 5 App. Cas. at pp. 767, 768, and he may, like the drawer, vary his obligation in different ways. See sections 34, 60 and 62.

Hamilton vs. Isaacson, 5 D. L. R. 114, 21 W. L. R. 333.

Where a note payable to order of the payee, was endorsed to the plaintiff in the name of the payee per the name of another party, who was a stranger to the note, the plaintiff cannot recover thereon without showing that such person was duly authorized by the payee to indorse the note for him.

Nicholson vs. McKale, 5 D. L. R. 237, 41 Que. S. C. 340.

Where one who has witnessed the signatures to a promissory note signs a guarantee of the payment thereof, upon the back of the note, and adds, after his signature, the word "witness," his signature is complete before the addition of the word "witness" which is thus mere surplage, and he is liable as an "aval" upon the note.

The obligation of the indorser of a note is conditional, the condition being that on default by the maker, the note shall be protested and notice given to the indorser. In consequence he cannot maintain an action against the maker to be indemnified against his obligation, even though the note is due and unpaid if it has not been protested and notice given. *Trottier vs. Rivard*, Q. R. 23, S. C. 526 (Sup. Ct.)

Johnston vs. Macrae, 17 W. L. R. 132 (B. C.).

The defendant had indorsed before the payee.

Held, however, following *Robinson vs. Mann*, 21 Can. S. C. R. 484, that he was liable upon his indorsement.

As to the nature of the contract of indorsement, see the remarks of Maule, J., in *Castrique vs. Buttigieg*, 10 Moore P. C. at p. 108 (1855).

The indorsers may have an agreement varying as between themselves the undertaking in this section, and even reversing the order in which they are to be liable to each other. If two or more persons indorse a bill or note to accommodate the acceptor or maker, their relation to each other is that of co-sureties, irrespective of the order in which they have indorsed; *Macdonald vs. Whitfield*, 8 App. Cas. 733 (1883). See *Small vs. Riddell*, 31 U. C. C. P. 373 (1880).

The drawer and indorsers of a bill are jointly and severally responsible to the holder for the due acceptance and payment thereof, and if it be dishonoured the latter may enforce payment from all or any of the parties liable on the bill.

Martin Hargreaves Co. vs. Wrigley, 30 W. L. R. 92.

In an action on a note where the endorser set up the defence of infancy, the defence could not be supported by the endorser's own evidence of the date of his birth, which information he got from his mother, and from a copy of a certificate of his birth, since the said evidence was hearsay.

Frame vs. Hay, 7 O. W. N. 738.

Promissory notes—liability of endorser—intention—transfer of claim—evidence.

Knechtel Furniture Co. vs. Ideal House Furnishers, 19 Man. R. 652.

See sec. 131.

Johnson vs. McRae, 16 B. C. R. 473.

The T. Co. gave a note to C. G. Co., who indorsed it and handed it to the bank as security for general advances. The note was not paid when due, and was charged by bank back to C. G. Co. who then sued for the amount. While the note was under discount, and after it was due, defendant voluntarily handed the bank a share certificate in his favour from the T. Co. (a concern in which defendant was a director and shareholder). This certificate, the evidence shewed, was not deposited in pursuance of any previous arrangement, though probably in the hope of securing forbearance in future.

Held (1) that defendant was liable upon his indorsements, and (2) in the circumstances in which the certificate was deposited it was not available in satisfaction of the claim upon the note.

Knechtel Furniture Co. vs. Ideal House Furnishers, 19 Man. R. 652.

(1) Under s. 131 of the Bills of Exchange Act, R. S. C. 1906, c. 119, a person who indorses a promissory note not indorsed by the payee at the time may be liable as an indorser to the payee. *Robinson vs. Mann* (1901), 31 S. C. R. 484, and *McDonough vs. Cook* (1909), 19 O. L. R. 267, followed.

(2) Although the defendant company had made the note in question in pursuance of an agreement to assume the debt of another to the plaintiff company yet, as there was a good and valuable consideration given for that assumption, the plaintiffs were holders in due course, and the defendant company was liable upon the note.

(3) The other defendants being directors of the company defendant, having indorsed the note and induced the plaintiffs to enter into and perform the agreement in consideration of which the note was given, were estopped from disputing the validity of this transaction or setting up that the defendant company had not power to give the note; Bills of Exchange Act, s. 133.

DeWolfe vs. Richards (1908), 43 N. S. R. 34 (Appeal).

Plaintiffs sold a wagon to H., or which they took notes indorsed by defendant. H. absconded without making payment and defendant agreed with plaintiffs to deliver up to them the wagon in question, together with another wagon which H. had purchased from plaintiffs and not paid for, both being in his possession, upon being released from liability upon his indorsements. Plaintiffs assented to this, and left the wagons, temporarily, in defendant's possession:—

Held, that the change of defendant's position with respect to the wagons was good consideration for plaintiff's agreement to release him, and that whether defendant's agreement was of any benefit to plaintiffs or not was immaterial.

134. Measure of Damages, Amount of Bill, Interest, Expenses.—Where a bill is dishonoured the measure of damages which shall be deemed to be liquidated damages shall be:—

(a) the amount of the bill;

(b) interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case;

(c) the expenses of noting and protest. 53 V., c. 33, s. 57. Eng. s. 57.

The recovery of the damages mentioned in this section is provided for by sec. 135. Cf. sec. 126.

This section applies when a bill is dishonoured either by non-acceptance, sect. 81, or by non-payment, sect. 95, and the parties have no valid defence. Bills dishonoured abroad fall exclusively under the next sub-section: *re Commercial Bank of South Australia* (1887), 36 Ch. D. 522.

AMOUNT OF THE BILL.—If the bill bears interest from its date or issue, this would be included section 28; *Crouse vs. Park*, 3 U. C. Q. B. 458 (1847). So would exchange if indicated in the bill.

INTEREST.—This clause applies only to interest allowed as damages for non-payment of the bill at maturity. As to interest provided for by the bill itself which forms part of the bill or debt, see sect. 28.

EXPENSES.—As to these see sect. 124. Under this term the expense of protesting for better security is not included, nor is commission; *re* English Bank of the River Plate, *Ex-parte*. The Bank of Brazil (1893), 2 Ch. 438.

135. Recovery of Same.—In case of the dishonor of a bill, the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser the damages aforesaid. 53 V., c. 33, s. 57. Eng. s. 57.

As to the parties liable on a bill, see sec. 128 (acceptor), sec. 130 (drawer), secs. 131 and 133 (endorser).

The "damages aforesaid" are provided for by sec. 134.

Lachance vs. Duval, Que. R. 37 S. C. 310.

The indorser of a negotiable instrument becoming the holder on retiring it, has a right of action to be reimbursed only against prior indorser, sureties, if any, and the maker.

136. Re-Exchange and Interest.—In the case of a bill which has been dishonoured abroad, in addition to the damages aforesaid, the holder may recover from the drawer or any endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment. 53 V., c. 33, s. 57. Eng. s. 57.

Apparently in the Canadian Act the word re-exchange is used to signify, not the whole amount of the damages (exclusive of interest) as used in the English Act and as explained by Byles, J., in *Susé vs. Pompe* (1860), 8 C. B. N. S., 538, 565, but the excess of those damages over the amount of the bill and the expenses of noting and protest. (*Cf. Willans vs. Ayres*, 1877, 3 App. Cas. 133, 144, and judgments in *In re Gillespie, Ex parte Roberts*, 1886, 16 Q. B. D. 702, 18 Q. B. D. 286). Falconbridge, p. 569.

137. Transferrer by Delivery.—Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a "transferrer by delivery:"

2. Liability of.—A transferrer by delivery is not liable on the instrument. 53 V., c. 33, s. 58. Eng. s. 58.

No person is liable as endorser who has not signed the bill (section 131), but see section 138.

See section 2 as to "holder" and "delivery," and section 21 as to "bill payable to bearer."

As to negotiation, see section 60.

138. Warranty by—Genuineness—Right to Transfer—
"Bona fides."—A transferrer by delivery who negotiates a bill

thereby warrants to his immediate transferee, being a holder for value, .

- (a) That the bill is what it purports to be;
- (b) That he has a right to transfer it;
- (c) That at the time of transfer he is not aware of any fact which renders it valueless.

The transferrer by delivery, although not liable on the instrument itself, may in certain cases, in the event of its dishonour, be liable on the consideration for which the bill has been transferred: *Merchants Bank vs. Whidden*, 9 S. C. Can. 53 (1891). This is the case if the bill was given for an antecedent debt: *Mitchell vs. Holland*, 16 S. C. Can. 687 (1889); or if the delivery was not intended to operate a full and final discharge of the liability of the transferer. *Van Wart vs. Wooley*, 3 B. & C. 446. Where a person changes blank notes or cashes a cheque payable to bearer to oblige the holder, he can recover the money if the bank has stopped payment or if the cheque is dishonored. *Conn. vs. Merchants' Bank*, 30 U. C. C. P. 380 (1879); but in all the above cases the transferee, in order to hold the transferrer liable, must act with reasonable diligence in seeking to obtain payment, and in giving notice of dishonour or repudiating the transaction. *Pooley vs. Brown* (1862), 31 L. J. C. P. 134.

Where two or more persons become parties to a bill to accommodate some third party their rights and liabilities between themselves are those of co-sureties, and must be determined irrespective of the position of their names on the instrument. *Macdonald vs. Whitfield* (1883), 8 App. Cas. 733 P. C. *Stacey vs. Stayner*, 7 O. L. R. 684. In this latter case the plaintiff and defendant were both accommodation indorsers of a promissory note. The plaintiff was the payee, but when the instrument was given to him to indorse, the defendant's name was already on the back of it, and the plaintiff indorsed under the defendant's endorsement. Each testified that his liability was to be secondary to that of the other—not that they so agreed with each other, but that the maker so agreed with each of them respectively:—*Held*, that, being sureties for the one debt, the rule of equitable contribution applied, and the plaintiff, having paid the debt, was entitled to recover only half of it from the defendant.

DISCHARGE OF BILL.

139. Payment.—A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

2. Payment in Due Course.—Payment in due course means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

3. Accommodation Bill.—Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged. 53 V., c. 33, s. 59. Eng. s. 59.

A bill may be discharged by payment, release, prescription, compensation or set-off, confusion, novation, by being merged in a security of a higher nature, such as a bond, mortgage or the like, and by judgment—the indebtedness on the bill being merged in the judgment.

A party to a bill may be released and discharged under the circumstances mentioned in sections 96 and 142.

Form of Payment.—The holder of a bill is entitled to be paid in legal tender, which consists in Canada of British sovereigns and half sovereigns, United States Eagles and multiples and half of said Eagles, Dominion notes, Dominion silver to the amount of ten dollars and Dominion copper coins to the amount of twenty-five cents. The holder may, however, accept satisfaction in some other form than by way of legal tender. Anything which would operate as a discharge in the case of an ordinary contract to pay money is equally effectual in the case of a bill, and, as provided by section 142, a bill may even be satisfied in a manner which would not be sufficient in the case of ordinary contracts.

Amount of Payment.—If payment be made at maturity the full amount of the bill must be tendered, but if made thereafter it must also cover the damages specified in section 134. Part payment of a bill in due course operates as a discharge *pro tanto*.

Time of Payment.—Payment to operate as a discharge must be made at or after the maturity of the instrument, but premature payment or any other premature discharge is of course valid between the parties (Chalmers, p. 203). If payment be made before maturity the payer should see that the bill is delivered up. Payment by the drawee or acceptor before maturity operates as a mere purchase of the instrument, and, subject to section 142, if the form of the bill permit, it may be re-issued and further negotiated by the person paying. If premature payment is made by an indorser, he may wait until maturity to recover from other parties liable, or at once renegotiate the bill. No payment can be forced before maturity, except in the Province of Quebec, when the debtor is insolvent or *en déconfiture*, *Lovell vs. Meikle*, 2 L. C. R. 69, and then only against the debtor's estate, the other parties to the bill not becoming liable until maturity. Owing to compensation differing in Quebec from that of other Provinces, a bill transferred there after maturity would be subject to any money claim which the acceptor might have against any prior holder at or after maturity. (MacLaren).

Place of Payment.—Payment must be made at the place indicated in the bill. When no place is specified, presentment for payment must be made in accordance with section 85. The indication of a bank as a place of payment by one of its customers is a sufficient authority to the bank to pay the bill, although not bound to do so in the absence of special agreement: *Roberts vs. Tucker* (1851), 16 Q. B. 579.

Holder's Identity.—In England possession is *prima facie* evidence of identity. Cf. *Bulkeley vs. Butler*, 2 B. & C., at p. 441; and if the payer doubts the identity of the person presenting, or the genuineness of the instrument, he must pay or refuse payment at his own risk (Chalmers, p. 203).

Renewal Bill.—When a renewal bill is taken the original one is not discharged, unless there is a special agreement to that effect. It is a mere conditional payment. So where the bill of a third party is taken, the remedy on the original bill is suspended until the maturity of the new one. If that is paid or discharged, so is the original. If the new bill is dishonored, the original liability revives, except as to parties who are merely sureties, and who may have been discharged by the delay granted to the principal debtor (MacLaren).

Payment of Bills in a Set and Lost Bills.—See sects. 157 and 158, (5), (6).

Prescription.—The rights of the parties with regard to prescription are governed by the local laws of each province. In Quebec the time required is five years reckoned from maturity: C. C. Art. 2260 (4). The debt is then absolutely extinguished, and no action can be maintained after the delay for prescription is acquired: C. C. Art. 2267. In the other provinces of the Dominion, and in England, the time required for prescription is six years.

No indorsement of a bill or note made by a person receiving payment will take it out of the operation of the law relating to prescription: Art. 1229, Que. C. C.; R. S. Ontario, c. 23; R. S. Nova Scotia, c. 112; C. S. New Brunswick, c. 85. The debtor should write the memorandum of part payment, whether of principal or interest, on the back of the bill or note, and he and the creditor should sign it, but if this is not done, payment on account may be proved like any other fact.

No promise of acknowledgment is sufficient to prevent prescription unless in writing and signed by the party making the promise. R. S. O., R. S. N. S., and C. S. N. B., *supra* (unless the amount is under \$50.00, Que. C. C. Art. 1235). A simple acknowledgment of a sum due is presumed to mean a promise to pay, though it may be written without any such intention, but the promise of payment must not be repelled by any expressions in the acknowledgment.

See *Bank of B. N. A. vs. Hart*, 2 D. L. R. 810.

Cited under sec. 55.

No person is liable on account of the act or promise of his co-contractor or debtor, and one may be liable and may be sued without the other: R. S. O., R. S. N. S., and C. S. N. B., *supra*.

Sterling Bank of Canada vs. Laughlin, 3 O. W. N. 642, 1 D. L. R. 383.

A bank by purchasing a draft from the holder, forwarding it to the place of payment and delivering it to the paying bank which stamps the draft as its property, has lost its recourse against the party, from which it purchased the draft upon his endorsation thereof. It will be held to have surrendered the draft and to have accepted the liability of the paying bank for the clearing-house adjustment.

In Quebec, prescription cannot be renounced by anticipation, but time acquired may be renounced C. C. Art. 2184. Renunciation by one person does not prejudice his co-debtors, his sureties or third persons: Art. 2229.

Time when Prescription commences to Run.—Prescription begins to run on bills and notes from the first day an action could be brought upon them. As regards the acceptor, time begins to run from the maturity of the bill, unless (1) presentment for payment is necessary in order to charge the acceptor, in which case time (probably) runs from the date of such presentment, sec. 165 (2); or (2), the bill is accepted after its maturity in which case time (probably) runs from the date of acceptance, section 23 (2). As regards a drawer or indorser, time (generally) begins to run from date when notice of dishonour is received: Cf. *Castrique vs. Barnabo* (1884), 6 Q. B. 498, and section 81. When an action is brought against a party to a bill to enforce an obligation collateral to the bill, though arising out of the bill transaction, the nature of the particular transaction determines the period from which time begins to run: Chalmers, p. 292. Time does not run with respect to debt depending on a condition until the condition happens, or on debts with a term until the term has expired: Art. 2236, Que. C. C.

In Quebec, prescription runs against absentees, Art. 2232; also against married women, minors, idiots and insane persons, saving their recourse against those who legally represent them, Arts. 2234, 2269 C. C.; but in all other provinces, prescription only commences to run from the date of the return of the absentee, and in the case of minors, idiots and other incapable persons from the time of the removal of the impediment. The Ontario Revised Statutes, ch. 60, provided, however, that time shall run in favour of a joint debtor, although one or more of the joint debtors may be out of the Province.

Any one or more of the following prescriptions may be invoked in Quebec:—(1) Any prescription entirely acquired under a foreign law, on a bill payable outside of Quebec in favour of a person living abroad. (2) Any prescription entirely acquired in Quebec, reckoned from maturity, on a bill payable there, when the party was domiciled there at maturity; in other cases from the time he became domiciled there. (3) Any prescription resulting from the lapse of successive periods in the preceding cases, when the first period elapsed under the foreign law: Art. 2190. The court cannot of its own motion supply the defence resulting from prescription except in cases where the right of action is denied: Art. 2188. See Mac-laren.

For a definition of an accommodation party and his liabilities, see section 55, and see sections 70 and 73.

Though the right of action on the bill is discharged, the accommodation acceptor has a personal right of action for indemnity (Chalmers, p. 199), and prescription only commences to run in favor of the drawer from the time the accommodation acceptor paid the money due on the bill. If several persons endorse a bill or note for the accommodation of the acceptor or maker, and one of them pays it, the whole circumstances attendant upon its making, issue and transference may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, and reasonable inferences from these facts and circumstances are admitted to the effect of qualifying, altering, or even inverting the relative liabilities which the law merchant would otherwise assign to them. See *Macdonald vs. Whitfield*, 8 App. Cas. 733 (1883).

Where an action against the indorser of a note had been dismissed, on the ground that he had indorsed for the accommodation of the plaintiffs, this was held to be an answer to an action seeking to hold him responsible as a partner by estoppel in the firm which made the note: *Ray vs. Isbister* (1896), 26 S. C. Can.

Robertson vs. N. W. Register Co., 19 Man. L. R. 402 (K. B.).

See sect. 85.

Verdun vs. Theoret (1911), 12 Que. P. R. 265 (Bruneau, J.).

A claim upon a promissory note cannot be declared compensated by a debt which cannot be liquidated, considering its litigious nature, except by a long enquête.

Union Bank vs. McCullough, 7 D. L. R. 694.

An agreement set up by the maker of a note that both the original payee and the plaintiff endorsee had agreed before the note was given to grant a renewal thereof at maturity, but not evidenced by any writing, does not disclose a defence entitling the defendant to proceed to trial, where the plaintiff's claim has been verified in the manner required for summary judgment.

Bank of B. N. A. vs. Hart, 2 D. L. R. 810.

When a note is renewed the fact of such renewal does not operate as a novation. The holder may sue on either the original or the renewal note. The remedy on the original note is merely suspended until the maturity of the new one.

Patterson vs. Campbell (1910), 44 N. S. R. 214 (Court of Appeal).

The makers of a joint and several promissory note are joint contractors within the meaning of the Statute of Limitations, R. S. 1900, c. 165, s. 5 and Lord Tenterden's Act, and where such a note was entered into by plaintiff and defendant as sureties for C., the principal maker, and the note was dishonoured by C. and was paid by plaintiff after the Statute of Limitations had run as against the payee in favour of plaintiff and his co-surety.

Held, that such payment was voluntary on the part of plaintiff, and that he could not, by waiving in his own favour the defence of the Statute, established a claim against his co-surety for contribution.

La Banque d'Hochelaga vs. Ricard (1909), 18 Que. K. B. 252.

The payment of a dividend by the curator to an insolvent on account of a debt represented by notes, interrupts prescription of all persons liable as partners in that firm. 53 V., c. 33, s. 23. Eng. such notes.

Proof of this payment may be made without production of a writing signed by the debtor, by the production of extracts from the books of the curator, the proceedings therein entered being judicial and authentic. 1207 Civil Code.

St. Jean vs. Laurin, 7 O. W. N. 702.

Promissory note—action on—payments—onus—failure to satisfy—interpleader issue—assignment of those in action—validity—evidence—fraudulent intent—creditors under foreign judgment—proof of judgment—right to share in fund in court.

Can. Bk. of Commerce vs. Bellamy, 8 S. L. R. 381; 25 D. L. R. 123.

There can be no recovery on a note in an action commenced before its maturity, even though forming part of an action on other notes that had matured.

Norton vs. Kennealy, 8 W. W. R. 799.

Where the defence to an action on a promissory note is an engagement to renew the same, it is incumbent on the defendant to show that he has taken the proper steps towards such renewal.

Crooks vs. Cullen, 32 W. L. R. 308; 25 D. L. R. 817.

Action on note—defences—renewal—absence of consideration—failure to allot shares—fraud.

Garrett vs. Fischer, 7 O. W. N. 666.

Purchase price of company—shares—rebate—credit on notes—counterclaims—recovery of balance due on notes—damages.

Pennoyer Co. vs. Williams Machinery Co., 34 O. L. R. 493; 24 D. L. R. 607.

A promissory note given in payment of merchandise under an agreement that it is to be renewed after maturity for any portion of the goods unsold entitles the maker to but one renewal. (*Innes vs. Munro*, 1 Ex. 473, followed.)

Bank of Toronto vs. Hall, 8 O. W. N. 465.

Promissory note—application of payments—renewal—waiver—guaranty—misrepresentation—findings of fact of trial judge.

Campbell vs. Heinka, 17 D. L. R. 586.

The acceptance of a mortgage security maturing after the due date of promissory notes for the same debt does not of itself and apart from any express agreement impair or suspend the right of action upon the notes.

Cote vs. Dufresne, 47 Que. S. C. 215.

The maker of an accommodation note in favour of a third party, who, before its maturity, pays the amount of the note to a holder who had discounted it on condition that the holder should deliver to him in writing with the paid note another note signed by himself, becomes a creditor of the latter. There is then in accordance with the provisions of Art. 1169 C. E., a novation by a change of debtor from the first maker of the accommodation note to the maker of the second note. The consideration of the second note is that the holder of the first note receives from the maker the amount which he had paid on discounting it, and that he is thus immediately put in funds.

Serim Lumber Co. vs. Ross, 20 B. C. R. 89.

The defendant held a promissory note of one Gray, who made an assignment for the benefit of his creditors to the plaintiff. On the note coming due the plaintiff and defendant arranged for the renewal thereof by the defendant signing a note in favour of the plaintiff, who carried the note in his account as assignee for Gray. In an action for payment of the note:—*Held*, that there should be judgment for the plaintiff, but that the defendant was entitled to counter-claim for an accounting by the plaintiff of the moneys collected by him as assignee of the Gray estate which were applicable to the debt that Gray owed the defendant.

De St. Aubin vs. Binet, 18 D. L. R. 739.

A "renewal" of a note under the terms of a security given in respect of its endorsement is not necessarily restricted to another note made by the same parties, but may be shewn by the attendant circumstances to include within the protection of the security, the promissory note of another party; this result will follow where the latter had received the benefit of the original transaction and was obtained to substitute his direct obligation for the first note as a continuation of the original transaction and not with any intention of creating a novation, and where the endorser of the original note had endorsed the substituted note on the faith of such security with the concurrence of all the parties.

Harris vs. Murk, 8 S. L. R. 90.

The plaintiff being the assignee of three lien notes made by defendant in favour of one Moore, purported, before maturity of any of them, to declare the notes due in pursuance of power therein contained, and brought this action to recover payment. Such power was as follows:—"And if default is made in the payment of this note or any renewal or renewals thereby, or should D. H. Moore deem this note or any renewals insecure, of which he shall be sole judge, he shall have full power to declare this note or any renewal or renewals thereof due and payable at any time:"—*Held*, that it was incumbent on the plaintiff to prove that the notes were as a matter of fact deemed insecure by him at the time he purported to declare the same due, and the plaintiff having failed to prove this, his action must fail. *Quære*, whether in the event the plaintiff could excise such power since by the terms of the notes

such power was given only to Moore and might have been so given because of special personal confidence reposed in Moore by the defendant.

Renaud vs. Beauchemin (1908), Q. R., 35 S. C. 193; (Court of Review).

In an action on a promissory note payable to order, evidence is admissible, it being a commercial transaction, to prove that payments claimed by defendant and established by cheques and receipts bearing dates subsequent to that of the note were in fact made to retire a prior note.

Coristine Co. vs. Accident Guarantee Co., 32 Que. S. C. 359.

The production, by the promissor or maker, of a promissory note payable on a given date, without any indication upon its face or proof *aliunde* that it remained due after maturity, is *prima facie* evidence that it was paid and redeemed at, or before that time.

Rousseau vs. Nadreau, Que. R. 19 K. B. 97.

Where a negotiable promissory note, indorsed by the payee and another, was discounted in a bank and retired on maturity by the payee without protest as against the indorser and without demand of payment from the maker for nearly three years, there is a strong presumption in favour of the maker's claim that the note was given, without consideration and for accommodation of the payee, and proof of this fact by witnesses is admissible.

140. Payment by Drawer or Endorser—Gives Rights—Second Negotiation.—Subject to the provisions aforesaid as to an accommodation bill, when a bill is paid by the drawer or an endorser, it is not discharged: but—

(a) Where a bill payable to, or to the order of a third party is paid by the drawer the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill:

(b) Where a bill is paid by an endorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements, and again negotiate the bill. 53 V., c. 33, s. 59. Eng. s. 59.

Internat. Harvester Co. vs. Knox, 21 D. L. R. 807.

Where several lien notes, given on the conditional sale of a chattel, each contained a proviso that in default of payment of such note or any of the other notes, the whole amount of the price and interest and all obligations and notes given therefor should forthwith become due and payable without making presentment or demand, which were thereby waived, the conditional vendor may sue on all of the lien notes where one only is in default; no preliminary notice is necessary of an intention to claim the benefit of the acceleration claim, or, if such was necessary, the service of the writ was sufficient, subject to any right as to costs which might have arisen had the defendant forthwith paid the note which was past due. (*Westaway vs. Stewart*, 2 S. L. R. 178, distinguished).

A bill is discharged by payment in due course by or on behalf of the drawee or acceptor, or, in the case of an accommodation bill, by the party accommodated (sec. 139). In either of these cases the payment which discharges the bill is that of the party ultimately

liable. But except as aforesaid a bill is not discharged by payment by the drawer or an endorser. The endorser, or, where the bill is payable to the drawer's order, the drawer, who pays the bill, is remitted to his former rights as against the acceptor or antecedent parties. He may sue the acceptor and the parties antecedent to himself, or he may strike out his own and the subsequent endorsements and again negotiate the bill (*Callow vs. Lawrence*, 1814, 3 M. & S. 95; cf. notes to sec. 67) and the payment by the drawer will be no answer to the holder's action against the acceptor. *Jones vs. Broadhurst* (1850), 9 C. B. 173.

Lachance vs. Duval (1910), 37 Que. S. C. (Court of Review), p. 475.

The endorser of a promissory note payable to order, who has become the holder thereof by payment, has no recourse to be reimbursed except against prior endorsers, the guarantor, if any, and the maker.

Velie vs. Hemstreet (1909), 2 Sask. R. 296 (Appeal).

Plaintiff, the drawer of a bill of exchange accepted by the defendant, brought action thereon. The bill was drawn payable to the order of the Dominion Bank, and was not indorsed by the bank, but in the statement of claim it was alleged that upon dishonour the bill was returned by the bank to the drawer, who was then the holder thereof. The defendant appeared and filed a defence which was struck out on a motion for speedy judgment. On such motion the defendant filed no affidavit, but relied on the objection that the bill had not been indorsed to the plaintiff, who could not, therefore, maintain the action:—

Held (*per* Wetmore, C. J., and Johnstone, J.), that as the defendant had, in answer to the motion, raised a difficult question of law which might be an answer to the plaintiff's claim, he should be permitted to defend. *Per* Newlands, and Prendergast, JJ., that it was not necessary for the plaintiff in pleading to allege any facts which would be presumed in his favour, and it was therefore unnecessary to allege that the Dominion Bank were the holders for value, and it might be presumed that when they returned the bill to the plaintiff they were paid by him and it was therefore unnecessary to allege payment in order to entitle the drawer to recover. (2) That it was not necessary for the Dominion Bank to indorse the bill to the drawer, as when the bank was paid the bill ceased to be negotiable, and the only right of action which exists is the right of action against the acceptor by the drawer, which he acquires, not through the payee, but by virtue of his original position as drawer.

141. Acceptor Holding at Maturity.—When the acceptor of a bill is or becomes the holder of it, at or after its maturity, in his own right, the bill is discharged. 53 V., c. 33, s. 60. Eng. s. 61.

Whenever the acceptor or maker of a bill or note is discharged, all the other parties are discharged, and the instrument ceases to be a bill or note. If the acceptor becomes the holder of the bill before its maturity it is not discharged, and he may re-issue and further negotiate it, but he is not entitled to enforce payment of it against any intervening party to whom he was previously liable; section 73. If he becomes holder at maturity in the capacity of executor, administrator, trustee, assignee, tutor, curator or the like, the bill is not discharged. He must hold the bill "in his own right." (*Mac-laren*).

If a bill accepted by two or more joint acceptors is held by one of them at or after maturity, it is discharged; but such acceptor does not thereby lose his recourse or right of contribution against his co-acceptors: *Harmer vs. Steele*, 4 Ex. 1 (1849).

Johnston vs. L'Heureux, 27 W. L. R. 21.

Discussion of the Maxim "*Expressio unius est Exclusio alterius*" and review of the authorities. Held, also, that the plaintiff, being the holder of the note and entitled to sue upon it and in a position to deliver possession of it to the maker, was also entitled to sue upon the original consideration for the note; by sec. 141, the delivery to the maker after maturity would discharge the note, and all rights of action upon it would thereby become extinguished.

142. Renouncing Rights.—When the holder of a bill, at or after its maturity, absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged.

2. Against one Party.—The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity.

3. Writing.—A renunciation must be in writing, unless the bill is delivered up to the acceptor.

4. Holder in Due Course.—Nothing in this section shall affect the rights of a holder in due course without notice of renunciation. 53 V., c. 33, s. 61. Eng. s. 62.

The best kind of writing would be a memorandum on the bill signed by the holder relinquishing all claim against a party named, for this would be notice to anyone afterwards taking the bill, if still current.

The bill is discharged only when the renunciation by the acceptor is at or after maturity, and when it is absolute and unconditional. See *re George Francis vs. Bruce*, 44 Ch. D. 627 (1890). A bill or note payable at demand is "at maturity" immediately on its being made, and the holder in desiring to renounce all rights in it, when delivering it to any person other than the acceptor, must make his renunciation in writing: *Edwards vs. Walters*, W. N., Feb. 15, 1896, p. 15.

Where there is a payment of a sum less than the amount of the bill, the bill may, in Quebec and Ontario, be discharged under the provisions of the present section, or it may be considered as discharged by payment under section 139.

Hough vs. Kennedy, 13 W. L. R. 674.

See sec. 107.

Wade vs. Livingston (1909), 14 O. W. R. 549. (Appeal from 13 O. W. R. 708 dismissed).

Action on a promissory note at three months endorsed by defendant as an accommodation, given as collateral security for an existing debt or a running account. Such a note cannot be held as security for a new account beginning two years after the note has matured, the defendant not knowing or consenting thereto. Defendant is also released, time having been given the principal debtors.

See sec. 55.

Kinzie vs. Harper, 15 O. L. R. 582 (D. C.).

A definite oral bargain (good except for the Statute of Frauds) for the sale by the plaintiff to the defendant of an ascertainable and definite parcel of land is a sufficient consideration for a cheque drawn by the defendants upon a bank in favour of the plaintiff for a part of the purchase money; and, the cheque being dishonoured, the plaintiff was held entitled to recover the amount thereof from the defendant, the latter not being in possession, and the plaintiff not having made or tendered a conveyance, but being able and willing to perform his contract.

Loneragan & Hansford vs. Saskatoon Co., 21 D. L. R. 866; 31 W. L. R. 673.

Sureties executing note—conditions attached—release of sureties.

Charron vs. David, 23 Que. K. B. 399.

One who endorses a note to accommodate the holder, and without the note being endorsed by the firm to whose order it is made, is responsible to a third person holding the note in good faith. Such an endorser has no recourse against the maker of the note who only signed it on the endorser's false representations, in settlement of a sale of shares in a fictitious mine.

Kipley vs. Vellie, 21 D. L. R. 723; 32 W. L. R. 184.

Where a person signs a note as surety on condition that it is not to be used until a co-surety has signed it, any person who, having knowledge of that condition, discounts the note without first obtaining the signature of the co-surety holds it freed from any liability on the part of the surety who did sign it, and such surety is released.

143. Cancellation of Bill.—Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

2. Of any Signature.—In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent.

3. Discharge of Endorser.—In such case, any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged. 53 V., c. 33, s. 62. Eng. s. 63.

As to striking out endorsements, cf. notes to sec. 67.

Cf. sec. 144.

144. Unintentional Cancellation.—A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative: Provided that where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. 53 V., c. 33, s. 62. Eng. s. 63.

If a banker cancel a bill by mistake, without any want of due care, he does not incur any liability, but if there is negligence, and any loss result therefrom, he may be held liable: *Bank of Scotland vs. Dominion Bank, Toronto* (1891), A. C. 592.

145. Alteration of Bill—Holder in Due Course.—Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent endorser: Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. 53 V., c. 33, s. 63. Eng. s. 64.

As to what alterations are material, see sec. 146.

As to holder in due course, see sec. 56.

The word "apparent" in the proviso means an alteration which can be discerned by the holder. (*Cunningham vs. Peterson*, 1898, 29 O. R. 346, dissenting from the dictum of Denman, J., in *Leeds & County Bank vs. Walker*, 1883, 11 Q. B. D. at p. 90 to the effect that an alteration is apparent if the person sought to be made liable can at once discover by some incongruity on the face of the bill, and point out to the holder that it is not what it was, that is to say that it has been materially and fraudulently altered, even if the alteration is not an obvious one to all mankind). Cf. *Maron vs. Irwin* (1907), 15 O. L. R. 81, 87.

Bank of Hamilton vs. Weir & May, 6 W. W. R. 11.

Where after the signature of a note by one of two makers, the note is materially altered, and thereafter the note is renewed by both makers, the maker who signed the original note prior to its alteration is not liable on the renewed note for want of consideration.

Hebert vs. La Banque Nationale, 40 Can. S. C. R. 458.

R. induced H. to become a party to and indorser of a demand note for the purpose of raising funds and agreed to give warehouse receipts as security to the bank on discounting the note. It was arranged that the goods covered by the warehouse receipts were to be held and sold on joint account, each sharing equally in the profits or losses on the transaction. Subsequently R. altered the note, without the knowledge or consent of H., by adding thereto the words "*avec intérêt a sept par cent. par an*," and falsely represented to the bank that H. held the warehouse receipts as collateral security for his indorsement. A couple of months later H., for the first time, became aware that the goods had never been purchased or placed in warehouse, that no warehouse receipt had been assigned to the bank and did not, until some months later, know that the alteration had been made in the note. There was some evidence that H. had asked for time to make a settlement of the amount due to the bank upon the note after he had become aware of the fraud and the alteration so made:—

Held, that the instrument was a forgery and could not be ratified by an *ex post facto* assent. *The Merchants Bank vs. Lucas*, 18 Can. S. C. R. 704; *Cam. Cas.* 275, and *Brook vs. Hook*, 6 Ex. 89, followed. Per Idington, J. The circumstances of the case did not shew that there had been any assent to the alteration within the meaning of sec. 145 of the Bills of Exchange Act. Per MacLennan, J. The assent required to bring an altered bill within the exception by sec. 145 of the Bills of Exchange Act, R. S. C. (1906), ch. 119, must be given by the party sought to be bound at the time of or before the making of the alteration.

Held, also, that in the special circumstances of the case, there was no partnership relation between the parties to the note for the purposes of the transaction in question and there could be no implied authorization for the making of the alteration in the note. Judgment appealed from, Que. R. 16 K. B. 191, reversed.

Pickup vs. Northern Bank (1909), 18 Man. R. 675. (Court of Appeal).

A bank, with knowledge that the partnership is a non-trading one, has no right to discount for one of the partners for his own purposes a promissory note made in favour of the firm, although indorsed in the name of the firm, and will be liable to account to the other partners for his share of the proceeds in the absence of circumstances creating an estoppel. (2) The conversion of a special indorsement on a promissory note into an indorsement in blank by striking out the words "pay to the order of the Home Bank of Canada," above the signatures by the firm and the individual partners on the back, was a circumstance sufficient to put the defendant bank on its inquiry as to the right of one of the partners to discount it for himself.

146. Material—Date—Sum—Time—Place—Adding Places.—

In particular any alteration,—

- (a) of the date;
- (b) of the sum payable;
- (c) of the time of payment;
- (d) of the place of payment;

(e) by the addition of a place of payment without the acceptor's assent where a bill has been accepted generally, is a material alteration. 53 V., c. 33, s. 63. Eng. s. 64.

As to the cases in which material alterations will make a bill void, see sec. 145.

Sec. 146 is not exhaustive.

An alteration is material which in any way alters the operation of the bill and the liabilities of the parties, whether the change be prejudicial or beneficial, or which would alter its effect if used for business purposes; *Carrique vs. Beaty*, 24 Ont. A. R. 302 (1897).

The following alterations in bills and notes have been held to be material:—Alteration of the date, *Meredith vs. Culver*, 5 U. C. Q. B. 218 (1848); alteration of the sum payable, *Halcrow, vs. Kelly*, 28 U. C. C. P. 551 (1878); alteration of the time of payment, *Meredith vs. Culver, supra*; alteration of the place of payment, *McQueen vs. McIntyre*, 30 U. C. C. P. 426 (1879); adding a place of payment, *Calvert vs. Baker*, 4 M. and W. 417 (1838); making a "joint" note, "joint and several," *Samson vs. Yager*, 4 U. C. O. S. 3 (1834); by striking out or clipping off a condition indorsed, *Campbell vs. McKinnon*, 18 U. C. Q. B. 612 (1859); by adding "or order" to make the note negotiable, *Lawton vs. Millidge*, 4 N. B. (2 Kerr), 520 (1844), but see *contra Byron vs. Thompson*, 11 A. and E. 31 (1839); by adding a new maker after issue, *Reid vs. Humphrey*, 6 Ont. A. R. 403 (1881); erasing the signature of one or two joint makers, *Nicholson vs. Revill*, 4 A. and E. 675 (1836); changing "I" to "We," *Draper vs. Wood*, 112 Mass. 315 (1873); changing "order" to "bearer," *re Commercial Bank*, 10 Man. 171 (1894).

The following alterations have been held not to be material:

Inserting the words "months" where inadvertently omitted, *Laine vs. Clarke*, 3 Rev. de Leg. 434 (1816); writing the words "pour aval" over the signature of the first indorser, when he had in fact indorsed the note above the payee, and as an "aval," *Abbott vs. Wurttele*, Q. R., 6 S. C. 204 (1894); a memorandum at the foot declaring the note to be payable at a particular place, *Cunard vs. Tozer*, 4 N. B. (2 Kerr) 365 (1844); changing the name of the drawees from S. C. & Co. to S. & Co., their proper firm name, *Farquhar vs. Southey*, 1 M. and M. 14 (1826); adding "on demand" where no due time was mentioned, *Aldous vs. Cornwell*, L. R., 3 Q. B. 573 (1868); inserting the dollar mark before the numerals, *Houghton vs. Francis*, 29 Ill. 244 (1862); correcting a name incorrectly written, *Cole vs. Hills*, 44 N. H. 227 (1863); *Derby vs. Thrall*, 44 Vt. 413 (1872); adding an erroneous due date to a bill, *Fanshawe vs. Peet* (1857), 26 L. J. Ex. 314; the striking out of the words "or order" by the acceptor in the case of a bill payable to "D. or order," *Decroir vs. Meyer* (1890), 25 Q. B. D. 343 C. A.

The plaintiff's claim was on a note made by the defendant payable to the plaintiffs at three months after date. When produced in Court the words "Extended to November 28th, '02," were found written in the lower left hand corner of the note with the initials W. H. R. below. These added words were in the handwriting of Mr. Riddell, the secretary of the plaintiff company. The defendant denied all knowledge of or assent to the extension:—*Held*, that the words added were more than a mere memorandum giving time for payment, and must be read into the note, and had the effect of changing the note from one at three months to one at four months, and being thus a material alteration the note became void in the hands of the plaintiffs as against the defendants.

Mutual Life Assurance Co. vs. McLaughlin, 39 C. L. J. 630. See also, *La Banque Provinciale vs. Charbonneau*, 6 O. L. R. 302.

There are, however, two cases in which an alteration in a material part will not vacate the instrument: (1) where such alteration is made before the bill or note is issued or becomes an available instrument, and (2) where the bill is altered to correct a mistake, and in furtherance of the original intention of the parties: *Brutt vs. Picard* (1824), R. & M. 37.

Subject to two exceptions, the holder of a bill, which has been avoided by a material alteration, cannot sue on the consideration in respect of which it was negotiated to him: *Alderson vs. Langdale* (1832), 3 B. and Ad. 660.

Exception 1. If the bill was negotiated to him after the alteration was made, and he was not privy to the alteration, he may sue on the consideration: *Burchfield vs. Moore* (1854), 23 L. J. Q. B. 261.

Exception 2. If the bill was altered while in the custody or under his control, he can still recover, provided (a) that he did not intend to commit a fraud by the alteration. *Hunt vs. Gray* (1871), 10 Amer. R. 232, and (b) that the party sued would not have had any remedy over on the bill if it had not been altered (*Chalmers*, p. 217).

Whether an alteration is material or not is a question of law.

ACCEPTANCE AND PAYMENT FOR HONOUR.

147. Acceptance for Honour "supra" Protest.—Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person,

not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. 53 V., c. 33, s. 64. Eng. s. 65.

As to the dishonour by non-acceptance, see sec. 81, and as to protest generally see secs. 113 and 114. As to protest for better security, see sec. 116.

As to the liability of the acceptor for honour, see sec. 152.

The holder may refuse to allow an acceptance for honour. He may desire to exercise his immediate right of recourse against the drawer and endorsers (sec. 82). If a referee in case of need is named in the bill, it is in the option of the holder to resort to him or not, as the holder may think fit (sec. 33).

As to the form of acceptance for honour, see sec. 151.

148. In part.—A bill may be accepted for honour for part only of the sum for which it is drawn. 53 V., c. 33, s. 64. Eng. s. 65.

An ordinary acceptance to pay part only of the amount for which the bill is drawn is a qualified acceptance (sec. 38), which the holder may refuse to take (sec. 83).

149. Deemed to be for Honour of Drawer.—Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer. 53 V., c. 33, s. 64. Eng. s. 65.

Cf. notes to sec. 151.

150. Maturity of After Sight Bill.—Where a bill payable after sight is accepted for honour its maturity is calculated from the date of protesting for non-acceptance and not from the date of the acceptance for honour. 53 V., c. 33, s. 64. Eng. s. 65.

Cf. sec. 45.

151. Requirements—Writing — Signature.—An acceptance for honour *supra* protest, in order to be valid, must,—

(a) be written on the bill, and indicate that it is an acceptance for honour; and

(b) be signed by the acceptor for honour. 53 V., c. 33, s. 64. Eng. s. 65.

It is sufficient if the acceptor for honour merely writes "accepted for honour," or "accepted S. P." on the bill and signs his name underneath; but it is usual for him to state for whose honour he accepts. Chalmers, p. 230.

If the acceptance does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer (sec. 149).

152. Liability of Acceptor for Honour.—The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance.

if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts:

2. **To Holder and Other.**—The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted. 53 V., c. 33, s. 65. Eng. s. 66.

Cf. secs. 117 to 119.

As to presentment for payment to the acceptor for honour, see sec. 94.

It seems an acceptor for honour is bound by the estoppels which bind an ordinary acceptor, and also by the estoppels which would bind the party for whose honour he accepted; as to which see secs. 129, 130 and 133. Chalmers, p. 232, citing *Phillips vs. im Thurn*, 1866 L. R. 1 C. P. at p. 471.

153. Payment for Honour "supra" Protest.—Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

2. **If More than One Offer.**—Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

3. **Refusal to Receive Payment.**—Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

4. **Entitled to Bill.**—The payer for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest.

5. **Liability for Refusing.**—If the holder does not on demand in such case deliver up the bill and protest, he shall be liable to the payer for honour in damages. 53 V., c. 33, s. 67. Eng. s. 68.

When a bill has been paid *supra* protest it ceases to be negotiable: *Ex parte Swan* (1868), L. R., 6 Eq. 344, Noughier, sec. 1026 and Pothier Nos. 113, 114.

As to the rights required by payment for honour *supra* protest, see sec. 155. The payment must be attested by a notarial act of honour (sec. 154).

The "protest" referred to in sub-sec. 4 means the protest for non-payment by the acceptor, and not protest for better security. The expense of protest for better security being a voluntary act for the benefit of the holder (sec. 116) is not chargeable against the acceptor. (*In re English Bank. Ex parte Bank of Brazil* (1893), 2 Ch. 438, 444).

154. Attestation of Payment for Honour.—Payment for honor *supra* protest, in order to operate as such and not as a mere

voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

2. Declaration.—The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays. 53 V., c. 33, s. 67. Eng. s. 68.

155. Discharge—Subrogation.—Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays, and all parties liable to that party. 53 V., c. 33, s. 67. Eng. s. 68.

If the holder is a holder in due course, or if any party to the bill subsequent to the party for whose honour the bill has been paid was a holder in due course, the payer for honour acquires their right in this respect. Among the duties to which the payer for honour succeeds is that of giving notice of dishonour: *Goodhall vs. Pothill*. 14 L. J. C. P. 145 (1845).

Lost Instruments.

156. Holder to have Duplicate of Lost Bill.—Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

2. Refusal—Compulsion.—If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so. 53 V., c. 33, s. 68. Eng. s. 69.

Pittsburg Steel Co. vs. Leprohon (1909). Que. R. 18 K. B. 542.

The security to be given for the payment of a lost bill of exchange provided for in s. 157, c. 119, R. S. C., 1906, the guarantor who shews his solvency as to his moveables is not bound to produce the title nor proof, by the certificate of the registrar that they are free from all charges, liens, etc. This security being in a matter of commerce, the solvency of the guarantor may be judged by his moveable goods.

157. Action on Lost Bill—Indemnity.—In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question. 53 V., c. 33, s. 69. Eng. s. 70.

Neville vs. Eaton, 3 O. W. N. 215.

The loss or destruction of the bill does not relieve from the duty of demanding payment. A copy should be presented in accordance with sec. 85. This should be accompanied by an offer of indemnity, and if payment is refused, protest may be made on the

copy or written particulars, sec. 112, and notice of dishonour must be given. Neglect to offer indemnity to the maker or acceptor on demand of payment does not deprive the payee of his right of action, but it will prevent him from recovering costs, and will compel him to bear any special damages resulting from the neglect on his subsequent suit: 2 Daniel, sec. 1465. See *Thackeray vs. Blackett*, 3 Camp. 164 (1812).

The holder of a lost note cannot maintain an action for its amount by offering merely to reimburse the maker if it should be found. He should offer to give security that the maker should not be troubled by the note. This rule applies as well to the case of a non-negotiable note merely mislaid.

Pillow & Hersey Co. vs. L'Esperance, Q. R., 22 S. C. 213 (Ct. Rev.).

BILL IN A SET.

158. Bills in Set.—Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

2. Acceptance.—The acceptance may be written on any part and it must be written on one part only. 53 V. c. 33, s. 70. Eng. s. 70.

If one part of a set omit reference to the other parts, it becomes a separate bill in the hands of a holder in good faith. Chalmers, p. 238.

159. Endorsing More than One Part.—Where the holder of a set endorses two or more parts to different persons, he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed as if the said parts were separate bills.

2. Negotiation to Different Holders.—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill: Provided that nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

3. More than One Part Accepted.—If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

4. Part Accepted—Payments without Delivery.—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

5. Discharge.—Subject to the provisions of this section, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. 53 V. c. 33, s. 70. Eng. s. 71.

CONFLICT OF LAWS.

Conflict of laws may arise between two or more provinces of the Dominion, and doubtless the word "country," as used in sec. 160, includes province.

As between different provinces, a conflict of laws may arise: (1) in regard to the provisions of the Act which create special rules for the Province of Quebec, e. g., as to non-juridical days (see secs. 43 and 164) or protest (see secs., 14 and 162); and (2) in regard to matters not expressly or impliedly provided for by the Act and not governed by the law merchant within sec. 10. Such matters include the law relating to capacity, limitations and prescriptions, set off and compensation, evidence, principal and surety, joint and several liability, illegality, payment and discharge. Cf. Falconbridge, pp. 598 *et seq.*, where the subject of Conflict of Laws is discussed very fully.

160. Requisites of Form—Unstamped Bill—Conforming to the Law of Canada.—Where a bill drawn in one country is negotiated, accepted or payable in another, the validity of the bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or endorsement, or acceptance *supra* protest, is determined by the law of the place where the contract was made: Provided that,—

(a) where a bill is issued out of Canada, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(b) where a bill, issued out of Canada, conforms, as regards requisites in form, to the law of Canada, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Canada. 53 V., c. 33, s. 71. Eng. s. 72.

The Bills of Exchange Act does not deal with the consequences which are to flow from the character which it attaches to the promise which a bill or note contains; and, therefore, these consequences fail to be determined according to the law of the Province in which the liability is sought to be enforced.

Cook vs. Dodds, 6 O. L. R. 608.

Molson's Bank vs. Jodoin, 15 Que. P. R. 376.

There can be no adjudication on a motion to amend served and filed after the filing and presenting of a declinatory exception until the jurisdiction has been declared by a judgment on that exception. The fact that the defendant made notes and a draft at Victoriaville, District of Arthabaskaville, and the fact of electing domicile there for the acceptance of that draft, do not constitute an election of domicile to recover, before the Court of the District of Arthabaska, certain notes given as renewals and dated at Montreal.

An action on promissory notes dated at one place, but signed in another cannot, in the absence of other circumstances conferring jurisdiction, be brought in the district in which the notes were dated.

Cardinal vs. Picher, 7 Que. P. R. 147.

Form of Bill.—Chalmers, p. 239, illustrates the effect of sub-section (a) by the following cases:—

(1) A bill drawn and payable in France expresses no value received, and is, therefore, invalid according to French law. If it is indorsed in England, the indorser could be sued there (*Cf. Wynne vs. Jackson* (1826), 2 Russ. 351 and 634), though the drawer could not.

(2) By the law of Illinois a verbal acceptance is valid. A bill drawn in London on a town in Illinois is verbally accepted there, The acceptance is valid (*Cf. Scudder vs. Union Bank* (1875), 1 Otto, Sup. Ct. U. S. 406).

Capacity.—Where there is a conflict of different laws on this question the general rule, as stated in the notes to sec. 47, is that it is governed by the law of the domicile. The Act has no provision on this question of conflict, unless such a wide meaning should be given to the word "interpretation" in clause (b) of this section (Maclaren), and it would be straining the meaning of that word to make it include capacity (Lafleur, p. 184).

Completion of Contract.—The different contracts of the drawer, acceptor and indorser of a bill are only complete upon delivery, and the contract is made in each case where this is affected, not where the signature is attached, *Chapman vs. Cottrell*, 34 L. J. Ex. 186 (1865); but the presumption is that a bill issued, indorsed and delivered at the place where it bears date, and accepted at the place where the drawee is addressed unless there is something to show that the contract was, in fact, made at some other place (Maclaren).

Contracts that will not be enforced.—Contracts immoral, or contrary to the law of nations, or injurious to British public interests, though valid where made, will not be enforced on behalf of a guilty party in our courts: Byles, 14th ed., p. 385. The reason is that the laws of foreign countries are admitted in our Courts not *proprio vigore* but *excomitate*.

161. "Lex Loci"—Law of Canada.—Subject to the provisions of this Act, the interpretation of the drawing, endorsement, acceptance or acceptance *supra* protest of a bill, drawn in one country and negotiated, accepted or payable in another, is determined by the law of the place where such contract is made: Provided that where an inland bill is endorsed in a foreign country, the endorsement shall, as regards the payer, be interpreted according to the law of Canada. 53 V., c. 33, s. 71. Eng. s. 72.

An inland bill is a bill which is, or on the face of it purports to be, (a) both drawn and payable in Canada, or (b) drawn within Canada upon some person resident therein (sec. 25).

The rule of private international law, that the validity of a transfer of moveable chattels must be governed by the law of the country in which the transfer takes place, applies to the transfer of bills by endorsement (*Embiricos vs. Anglo-Austrian Bank* (1905), 1 K. B. 677, following *Alcock vs. Smith* (1892), 1 Ch. 238, as a decision to that effect).

This proposition is independent of sec. 161, unless the word "interpretation" in the section means the "legal effect" of the endorsement ([1905] 1 K. B. at p. 635). *Cf. Sanders vs. St. Helens* (1906), 39 N. S. R. 370; *London, etc., Bank vs. Maguire* (1895), Q. R., 8 S. C. 358; *Falconbridge*, p. 602.

162. Law as to Duties of Holder.—The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, are determined by the law of the place where the act is done or the bill is dishonoured. 53 V., c. 333, s. 71. Eng. s. 72.

The drawer of the bill, and each endorser, contracts with the next following party to pay him on due notice of dishonour being given, and such notice must be measured by the law of the contract, whenever no question arises about the formalities to be observed in a particular place. Sec. 162 must be interpreted as applying only to the *last* holder. The words "or is not done" must be understood after the word "done" in the section. Westlake, p. 295. As to Quebec cf., sec. 114.

163. Currency.—Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulations, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable. 53 V., c. 33, s. 71. Eng. s. 72.

164. Due Date.—Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable. 53 V., c. 33, s. 71. Eng. s. 72.

Lex Loci Solutionis.—The law of the place of payment has also been applied to determine interest on a bill dishonoured by non-payment: *re* Commercial Bank of South Australia, 36 Ch. D. 522 (1887), section 134.

Discharge.—The present rule is that a defence or discharge, good by the law of the place where the contract is made or is to be performed, is to be held to be of equal validity in every place where the question may come to be litigated. In England and America the same rule has been adopted, and acted on with a most liberal justice. Story on Conflict of Laws, secs. 331 and 332. A bill discharged in Quebec by either compensation or prescription would be held to be discharged in other countries where these would not operate as discharges as to bills made or payable there. See *Harris vs. Juine*, L. R., 4 Q. B. 653 (1869); Story, sec. 582.

Lex Fori.—The law of the place where the action is brought or proceedings are taken governs as to all matters belonging to the remedy or mode of enforcement: *De la Vega vs. Vienna*, 1 B. & Ad. 284 (1830); Under this head are comprised.—(1) The limitation of actions subject to the operation of the law in places like Quebec, when it operates as a discharge; (2) set-off, subject to the same limitations, and (3) the admission of evidence.

Proof of Foreign Law.—When a question arises as to the law of a foreign country, it must be pleaded and proved as a fact in the case by competent witnesses: Westlake, p. 364; Lafleur, p. 23; *Concha vs. Murieta* (1890), 40 Ch. D., 543 C. A. It is usual to state what the foreign law is, and then to allege the acts, bringing the case within that foreign law: Byles, 14th ed., p. 392. In the absence of allegation and proof of the foreign law, it is presumed to be similar to that of the *locus fori*.

PART III.

CHEQUES ON A BANK.

165. Cheque Defined.— A cheque is a bill of exchange drawn on a bank, payable on demand.

2. Provisions as to Bill Apply.— Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque. 53 V., c. 33, s. 72. Eng. s. 73.

A cheque under the Act is drawn upon a bank (*i. e.*, an incorporated bank or savings bank carrying on business in Canada: see sec. 2).

If this section is read with sec. 17, which defines a bill of exchange, a cheque may be said to be defined by the Act as "an unconditional order in writing addressed to a bank, signed by the person giving it, requiring the bank to pay on demand a sum certain in money to or to the order of a specified person, or to bearer."

A cheque must be payable on demand (*i. e.*, expressed to be payable on demand or on presentation, or in which no time for payment is expressed: sec. 23).

As to the other elements of the definition, see notes to sec. 17.

Being a bill payable on demand, a cheque is not entitled to days of grace (sec. 42).

A bank which has sufficient funds in its hands belonging to its customer is liable to him if it dishonours his cheque, whereas the drawee of a bill, in the absence of contract, is not bound to accept, or, in the case of a demand bill, to pay, a bill drawn upon him, even if he has sufficient funds of the drawer in his hands. (*Cf. Goodwin vs. Roberts* (1875), L. R. 10 Ex. at p. 351).

The holder in the case of either a bill or cheque would have his recourse against the drawer (sec. 95), subject to the necessity of giving due notice of dishonour (sec. 96).

If the drawer of a cheque had not sufficient funds at the bank to meet the cheque, notice of dishonour would be dispensed with (sec. 107). It has been held that protest in Quebec is unnecessary as against the drawer of a cheque where the cheque has not been paid by reason of the failure of the bank (*Banque Jacques Cartier vs. Limoilou*, 1899, Q. B. 17 S. C. at p. 224; *cf. De Serres vs. Enard*, (1899), Q. R. 17 S. C. 199).

Notice of death of a customer who has drawn a cheque upon a bank, terminates the bank's authority to pay the cheque (sec. 167); the death of the drawer of a bill usually has no effect upon the duties of the parties to the bill (see notes to sec. 127).

Under the Canadian Act a cheque and a bill of exchange are in the same position as regards payment upon a forged or unauthorized endorsement, except that clause (*b*) of the proviso to sec. 49 contains a special provision applicable to cheques alone. The protection to a paying banker afforded by sec. 60 of the English Act is not available to a bank in Canada; see notes to secs. 49 and 50, *supra*.

If a cheque is certified or marked "good" by the drawee bank at the request of the payee or holder, the amount of the cheque being charged from all liability either on the cheque or on the original holder does not there and then require payment, the

drawer is discharged from all liability either on the cheque or on the original consideration for which it was given (*Boyd vs. Nasmith* (1889), 17 O. R. 40; *Banque Jacques Cartier vs. Limoilou* (1899), Q. R. 17 S. C. 211; *Re Commercial Bank, Banque d'Hoche-laga's Case* (1894), 10 Man. R. 171).

But in the case of a cheque certified before delivery, no presentment at the time of the certification is made by the payee or holder who alone is entitled to present the cheque for payment, and therefore he cannot be said to have elected to accept the bank's undertaking to pay in place of actual payment. He is still entitled to present for payment and, if he so desires, to receive the money. *Cf. Gaden vs. Newfoundland Savings Bank*; and see *Falconbridge*, pp. 611 *et seq.*

Gross vs. Mihm & Dundas (1910), 3 Sask. R. 393, Newlands, J.

Defendants in the issue purchased certain land from one R. and deposited their cheque for the purchase price with the manager of a bank until such time as R. shewed title. Before this cheque was delivered to R. the plaintiff attached any debt due to R. by defendants by service of a garnishee summons. A case was thereupon stated to determine the liability of the defendants.

Held, that the purchase price was not paid by the cheque before attachment, but was simply deposited with defendant's agent to be paid over on their instructions, and, therefore, they were still indebted to the primary debtor at the time of service of the garnishee summons.

C. P. R. vs. La Banque d'Hoche-laga, 18 (Que.) K. B. 237.

Allaire vs. King, 33 Que. S. C. 343 (K. B.)

A cheque on a bank indorsed by the payee is not evidence of a loan to him by the drawer. Of itself and unexplained it is a proof of a payment by the drawer to the payee.

Nadeau vs. Bank of Toronto, Que. R. 32 S. C. 178 (Review).

A cheque written as follows:—"Pay V. N. or bearer \$2.50 two-fifty $\frac{50}{100}$ dollars," signed "E. N.," is not an order to pay two hundred and fifty dollars. The holder who cashed it for two dollars and fifty cents only is not in fault and incurs no liability to the indorsers. The holder cannot claim that before it was presented he had taken it from a debtor for the larger amount for which the debtor had himself received it from the indorser. Knowledge of the debtor that the holder had made a mistake, followed by an agreement between them, deprives the indorser of the recourse over which he claims to exercise against the holder in the name of the debtor according to article 1031 C. C.

Northern Bank vs. Yuen, 2 Alta. R. 310.

A junior clerk employed by the Canadian Bank of Commerce obtained by fraud possession of the defendant Yens cheque for \$350 in favour of the defendant Jacques, endorsed by Jacques, dated 9th June, 1906, and on the 30th October, 1906, placed the acceptance stamp of the Canadian Bank of Commerce, his initials and the ledger folio thereon and negotiated the cheque for cash to the plaintiff. In an action by the plaintiff against the drawer and the endorser of the cheque and the Canadian Bank of Commerce as acceptor:—

Held, the plaintiff could not recover against the drawer and endorser, for the reason— that the plaintiff was not the holder in due course, the cheque having come into possession of the plaintiff on the 30th October, nearly four months after it was drawn,—it

being held that the cheque having been in circulation an unreasonable length of time was overdue.

In order to constitute estoppel by negligence, it is essential for the negligence to be in or immediately connected with the transaction itself, which is complained of; and while there may be a duty to be careful not to facilitate any fraud in connection with the transaction, it is essential in the event of a breach of that duty to show that the fraud was the natural and ordinary result of the breach of that duty.

Held, therefore, that although the bank may have been negligent in leaving the acceptance stamp and the ledger where it would be possible for an authorized person to make use of them with apparent authority; yet the clerk's fraud did not flow as a natural and ordinary result of such want of care; and the bank was therefore not precluded from setting up want of authority for the acceptance.

Held, also, that a cheque after acceptance is subject to all the rules applicable to negotiation of an unaccepted cheque. The distinction explained between a "marked cheque," according to the English custom of bankers, and "certified" cheque. The customary certification of a cheque constitutes an acceptance within the meaning of the Bills of Exchange Act. Such an acceptance makes the bank directly liable to the holder. If the payee or a subsequent holder procures the certification of a cheque, the drawer is discharged.

166. Presentment for Payment—Measure of Damages—Holder becomes Creditor.—Subject to the provisions of this Act,—

(a) where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid;

(b) the holder of such cheque, as to which such drawer or person is discharged shall be a creditor in lieu of such drawer or person of such bank to the extent of such discharge, and entitled to recover the amount from it.

2. Reasonable Time.—In determining what is a reasonable time, within this section, regard shall be had to the nature of the instrument, the usage of trade and of banks and the facts of the particular case. 53 V., c. 33, s. 43. Eng. s. 74.

The drawer of a cheque is in a different position from the drawer of a bill in respect to presentment for payment.

The drawer of a bill payable on demand is discharged if it is not presented for payment within a reasonable time after its issue (sec. 86); the drawer of a cheque in such a case is discharged only if he had the right at the time of presentment as between him and the bank to have the cheque paid and suffers actual damage through the delay, and only to the extent of such damage (sec. 166).

If the drawer does not suffer damage by the delay, the holder may present a cheque within any period not exceeding the period of limitation of action or prescription.

Clause (b) of this section has adopted the principle of the civil law and modifies the general rule of sec. 127 that a cheque does not operate as an assignment of funds in the hands of the bank. If the drawer is discharged under clause (a), the holder may recover from the bank, *i.e.*, out of the drawer's funds, to the extent to which the drawer is discharged. (*Banque Jacques Cartier vs. Limoilou* (1899), Q. R., 17 S. C. at pp. 222-3. The liability is in the alternative. The drawer and the bank are not liable jointly and severally. (*Ibid*).

If the drawer had no funds to his credit, but was authorized to overdraw to the amount of the cheque, the drawer would probably still be discharged, but the holder could not prove against the estate of the bank.

Sub-sec. 2 perhaps introduces a new and less rigorous measure of reasonable time. The common law rule is stated by Chalmers (p. 251), as follows:—

(1) If the person who receives a cheque and the banker on whom it is drawn are in the same place the cheque must, in the absence of special circumstances (*Firth vs. Brooks*, 1861, 4 L. T. N. S. 467), be presented for payment on the day after it is received. (*Alexander vs. Burchfield* (1842), 7 M. & Gr. 1061).

(2) If the person who receives a cheque and the banker on whom it is drawn are in different places, the cheque must, in the absence of special circumstances, be forwarded for presentment on the day after it is received, and the agent to whom it is forwarded must, in like manner, present it or forward it on the day after he receives it. (*Harc vs. Henty* (1861), 30 L. J. C. P. 302; *Princau vs. Criddle* (1869), L. R. 4 Q. B. 455; *Heywood vs. Pickering* (1874), L. R. 9 Q. B. 428).

(3) In computing time non-business days must be excluded (sec 6); and when a cheque is crossed, any delay caused by presenting the cheque pursuant to the crossing is probably excused. (*Cf. Alexander vs. Burchfield* (1842), 7 M. & Gr. at p. 1067; since this case crossing of cheques has received legislative sanction).

The question of reasonable time for the purposes of sec. 166 must be distinguished from the question of reasonable time under other sections of the Act. By sec. 70 a bill payable on demand is deemed to be overdue, so that it can be negotiated only subject to any defect of title affecting it at its maturity, when it appears to have been in circulation for an unreasonable length of time see notes to that section as to cheque. *Cf.*, also sec. 77, which is applicable only to bills payable at sight or after sight. Falconbridge, p. 617.

Revelstoke Sawmill Co. vs. Fawcett, 8 W. W. R. 477.

F., in settlement of a claim for material supplied, sent to R. a cheque drawn on the Dominion Trust Company. R. did not present the cheque for 5 days. Upon presentation it was dishonoured, the Dom. Trust Co. having suspended payment. *Held*, that if the Dom. Trust Co. was an incorporated bank or a savings bank so as to come within the definition of bank contained in the Bills of Exchange Act, F. was discharged as to the amount of actual damages suffered by him through the delay in presentation, and R., under sec. 166 (b) became a creditor in lieu of F. of the Trust Co., to that amount; but that if the Trust Co. was not a "bank" within the above definition, not only was F. discharged in respect of that bill, but he was also discharged from his liability on the original consideration for which it was given.

Bank of B. N. A. vs. McKinnon, 7 W. W. R. 689.

A note was made by A., payable to the order of B., and C. endorsed his name on the back of the note before it had been completed by any endorsement by B. C. contended that he was not liable, having endorsed the note previously to the payee, and cited in support of his contention, the cases of *Steele vs. McKinlay* (1880), 5 App. Cas. 754; *Jenkins vs. Comber* (1898), 2 Q. B. 168, 67 L. J. A. B. 780; *Shaw vs. Holland* (1913), 2 K. B. 15, 82 L. J. K. B. 592; *Trimble vs. Hill* (1879), 5 App. Cas. 342, 49 L. J. R. C. 49:—*Held*, that under the Bills of Exchange Act, and following *Robinson vs. Mann*, 31 S. C. R. 484, C. was liable as an endorser within the meaning of the Act.

167. Authority to Pay—Countermand—Death.—The duty and authority of a bank to pay a cheque drawn on it by its customer, are determined, by,—

(a) countermand of payment;

(b) notice of the customer's death. 53 V. c. 33, s. 74. Eng. s. 75.

The relations of banker and customer in respect of cheques may be summarized as follows (Chalmers, p. 251):

(1) In the absence of special contract, the relations between a banker and his customer are those of debtor and creditor and in addition the customer is entitled to draw cheques on the banker to the extent of the sum for which he is a creditor. *Re Agra Bank* (1866), 36 L. J., ch. 151.

(2) Subject to the exceptions above noted, where a cheque is presented for payment and dishonoured, and the banker has in his hands at the time funds to the credit of his customer sufficient to meet it, the banker is liable to his customer in damages. *Todd vs. Union Bank*, 4 Man. R. 204 (1887), unless the requisite funds were paid in so short a time before the dishonour of the cheque that the banker could not with the exercise of reasonable diligence have ascertained the state of accounts between them: *Whitaker vs. Bank of England* (1835), 1 C. M. & R. 749-750. The damages recoverable by a non-trader for the wrongful refusal of a bank to allow him to withdraw a special deposit are nominal or limited to interest on the money: *Henderson vs. Bank of Hamilton*, 25 O. R. 641 (1894). (Maclaren).

Northern Crown Bank vs. Yuen, 2 Alta. 310.

See sec. 165.

(3) A bank may, without special instructions, pay any bills or notes of which the customer is acceptor or maker, and which are payable at the bank: *Jones vs. Bank of Montreal*, 29 U. C. Q. B. 448 (1869); *Vagliano vs. Bank of England* (1891), A. C. 107.

(4) In the absence of special directions from the customer, it is the duty of the banker to pay the customers' cheques in the order in which they are presented, irrespective of their dates, provided the date is not subsequent to the presentment: *Kilsby vs. Williams* (1822), 5 B. & Ald. 819.

(5) Where a customer keeps his account at one branch of a bank, other branches are not bound to honour his cheques: *Woodland vs. Fear* (1857), 7 E. & B. 519. But if he has accounts in two or more branches the bank may combine them against him, provided they are all in the same right. A personal and a trust account

cannot be combined. See the whole status of branch banks in regard to bills discussed by the Privy Council in the case of *Prince vs. Oriental Bank* (1878), 3 App. Cas. 325. Cf. *Garnett vs. McKewan*, T. R. 8 Ex. 10

Countermand.—A customer may stop payment of a cheque before it is accepted, but not after: *McLean vs. Clydesdale Bank*, 9 A. C. 95 (1883). It has also been held that a bank is not bound to honour a customer's cheque after a garnishee order is served on it, even although the balance exceed the judgment: *Rogers vs. Whiteley* (1892), A. C. 118. Authority to pay the customer's cheque would also be revoked by notice of his insolvency. *Rogers vs. Whiteley supra*. As to countermand by telegram. See *Curtice vs. London, etc., Bank* (1908), 1 K. B. 293.

Death of a Customer.—Payment after the death but before notice is valid. *Rogerson vs. Ladbroke*, 1 Bing. 93 (1822). It has been held in England that after the death of a partner, the surviving party may draw cheques upon the partnership account. *Backhouse vs. Charlton*, 8 Ch. D. 444 (1878). In Quebec the death of a partner terminates the partnership, and also the right of the survivors to act for the firm, in the absence of a special agreement to the contrary: C. C. 1892, 1897.

Overdraft.—In the absence of special agreement, express or implied, founded on consideration, a banker is, of course, under no obligation to let a customer overdraw. As to implied agreement, see *Armfield vs. London & Westminster Bank* (1883), 1 C. & E. 170; as to presumption, see *Ritchie vs. Clydesdale Bank* (1886), 13 Sess. Cas. 114. As to the general duty of a bank not to disclose the state of a customer's account without good reasons. See *Hardy vs. Veasey* (1868), L. R., 3 Ex. 107.

A cheque on payment becomes the property of the drawer, *R. vs. Watts* (1860), 2 Den. C. C. 15, but the banker who pays it is entitled to keep it as a voucher until his account with his customer is settled; Cf. *Charles vs. Blackwell* (1877), 2 C. P. D. 162 C. A.

CROSSED CHEQUES.

168. Definition—General.—Where a cheque bears across its face an addition of,—

(a) The word "bank" between two parallel transverse lines, either with or without the words "not negotiable;" or—

(b) Two parallel transverse lines simply, either with or without the words "not negotiable;"

Such addition constitutes a crossing, and the cheque is crossed generally;

2. Special.—Where a cheque bears across its face an addition of the name of a bank, either with or without the words "not negotiable," that addition constitutes a crossing and the cheque is crossed specially and to that bank. 53 V., c. 33, s. 75. Eng. s. 76.

Although the provisions of the English Act have been adopted in the Canadian Act, the practice of using crossed cheques which is well known and frequent in England has never become usual and is in fact little understood in Canada.

The history of the English legislation in regard to crossed cheques and the meaning of the provisions of the present Act are discussed by Z. A. Lash, K.C., in an article in 6 Journal C. B. A. (1899) 166. See also Falconbridge, 619, *et seq.*

169. By Drawer.—A cheque may be crossed generally or specially by the drawer.

2. By Holder.—Where a cheque is uncrossed, the holder may cross it generally or specially.

3. Varying.—Where a cheque is crossed generally, the holder may cross it specially.

4. Words may be Added.—Where a cheque is crossed generally or specially, the holder may add the words *not negotiable*.

5. By Bank for Collection.—Where a cheque is crossed specially the bank to which it is crossed may again cross it specially to another bank for collection.

6 Changing Crossing.—Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially to itself.

7. Uncrossing.—A crossed cheque may be re-opened or uncrossed by the drawer writing between the transverse lines, the words *pay cash*, and initialing the same. 53 V., c. 33, s. 76. Eng. s. 77.

170. Material.—A crossing authorized by this Act is a material part of the cheque.

2. Altering Crossing.—It shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing. 53 V., c. 33, s. 77. Eng. s. 78.

171. Crossed to More than One Bank.—Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof. 53 V., c. 33, s. 78. Eng. s. 79.

172. Liability for Improper Payment—"Bona Fides."—Where the bank on which a cheque so crossed is drawn, nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or, if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid: Provided, that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying

the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the bank acting as its agent for collection as the case may be. 53 V., c. 33, s. 78. Eng. s. 79.

173. Protection in such Case.—Where the bank on which a crossed cheque is drawn in good faith and without negligence pays it, if crossed generally to a bank, or if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof. 53 V., c. 33, s. 79. Eng. s. 80.

174. Not Negotiable Cross.—Where a person takes a crossed cheque which bears on it the words "not negotiable" he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it. 53 V., c. 33, s. 80. Eng. s. 81.

175. Customer without Title—Bank Paying "bona fides."—Where a bank in good faith, and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment. 53 V., c. 33, s. 81. Eng. s. 82.

PART IV.

PROMISSORY NOTES.

176. Definition.—A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

2. Endorsed by Maker.—An instrument in the form of a note payable to the maker's order is not a note within the meaning of this section, unless it is endorsed by the maker.

3. Pledge—Invalidity.—A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof. 53 V., c. 33, s. 82. Eng. s. 83.

Unconditional.—See notes to sec. 17.

A note cannot be made conditionally, but a bill may be accepted conditionally (sec. 38).

SIGNED BY THE MAKER.—As to signature, see sec. 4.

As to a simple signature on a blank paper delivered by the signer in order that it may be converted into a note, see sec. 31.

As to the contract entered by the maker, see sec. 185.

As to when a note is payable on demand, see sec. 23.

As to when a note is payable at a determinable future time, see sec. 24. Cf. notes to sec. 17 under this head.

A note must not be expressed to be payable on a contingency (sec. 18).

A SUM CERTAIN IN MONEY.—Cf. notes to sec. 17.

A promise to pay out of a particular fund is not a note (sec. 17.)

SPECIFIED PERSON OR BEARER.—Cf. notes to sec. 17.

No form of words is essential to the validity of a note, provided the requirements of this section be fulfilled, *Hooper vs. Williams* (1848), 2 Exch. 20; but, on the other hand, a document might conform to the terms of the section and yet not be a promissory note. It must be such as to shew the intention to make a note: *Sibree vs. Tripp* (1846), 15 M. & W. 29. If there be no words amounting to a promise the instrument is merely evidence of a debt. For instance, a banker's deposit not running "Received of Mr. C. £150 to be accounted for on demand," and signed, will not be treated as a promissory note: *Hopkins vs. Abbott* (1875), L. R. 19 E. Q. 222.

Molsons Bank vs. Howard, 5 D. L. R. 875, 21 O. W. R. 278.

As to the absence of an absolute and unconditional promise.

An instrument promising to do anything in addition to the payment of money is not a note, sec. 17 (2), but it has been held in the United States that a promissory note may give the holder the option between the payment of the sum specified and the performance of some other act by the makers, though as to the latter it is not a note: Cf. *Dinsmore vs. Duncan* (1874), 57 New York R. 573. As the holder can demand money, and no option is given to the maker, it is said there is no uncertainty in the instrument (*Chalmers*, p. 263).

If the instrument is ambiguous, and it is uncertain whether it was meant to be a bill or note, the construction most favourable to the validity of the instrument will be adopted: *Marc vs. Charles*, 5 E. & B. 981 (1856). A bill may also be treated as a note under the circumstances mentioned in section 26.

An instrument invalid as a note may be valid as an agreement: *Kirkwood vs. Smith*, W. N. 1896, 46 (16).

Bon or I. O. U. If the instrument is a simple I. O. U., and contains no promise to pay, it is a mere acknowledgement of the debt, and it is not negotiable, *Gould vs. Coombs*, 1 C. B. 543 (1845). If there is a promise to pay it is a note, the following having been held sufficient: "11th Oct., 1831, I. O. U. £20, to be paid on the 22nd inst., W. B." *Brooks vs. Elkins*, 2 M. & W. 74 (1836). See also *Desy vs. Daly* (1897), Q. R. 12 S. C. 183.

An I. O. U. ought regularly to be addressed to the creditor by name, but though not addressed to anyone, it will be evidence for the plaintiff, if produced by him. *Taylor on Evidence*, s. 124.

When a note on its face contains a statement that it is given as collateral security, it is not a promissory note: *Sutherland vs. Paterson*, 4 O. R. 565 (1894).

Where collateral security is given with a note, the right to such collateral goes with the note. *Central Bank vs. Garland*, 20 Q. R. 142 (1890), and the creditor has a right to hold the securities even after the remedy on the note is barred by the statute of limitations: *Wiley vs. Ledyard*, 10 Ont. P. R. 182 (1883).

Haynes vs. Wilson, 29 W. L. R. 381; 20 D. L. R. 569.

Apart from any question of estoppel, no liability is created by affixing a signature to a note intending to sign merely as a witness to the signature of the real maker who had already signed and who alone dealt with the payee and got the chattels for which it was given there is no *concensus ad idem*, as there was no intention of promising to pay.

Merchants Bank of Canada vs. Bury, 23 O. L. R. 204; 21 D. L. R. 459.

An instrument in the form of a promissory note payable to order is none the less a promissory note because of the words "value received" being struck out and the words "account of lumber to be shipped" being inserted in lieu thereof. Cases cited.

J. I. Case Threshing Machine Co. vs. Desmond, 8 A. L. R. 298; 22 D. L. R. 455.

A promise to pay subjoined to a "threshing memorandum" acknowledging the quantity and price of threshing certain grain, may constitute the document a promissory note and therefore transferable by endorsement although the payee is not indicated therein by name, if the document shews with reasonable certainty that the payee is the contractor for the threshing who had acquired a lien under the Threshers Lien Act, Alberta.

Paquin vs. Turcotte (1908), 35 Que. S. C. 266. Champagne, J.

In a writing signed by two persons to determine certain reciprocal undertakings, the promise made by one person to pay, on demand, to the order of the other, a fixed sum of money, is not a promissory note, and articles 2340 and 2341, of the Civil Code are not applicable. Hence, if the signature is denied, verification thereof may be made by comparison of signatures.

Hobrecker vs. Sanders, 44 N. S. R., 14.

See sec. 57.

Vachoe vs. Straton (1909), 2 Sask. R. 72. Newlands, J.

The date of payment expressed in a promissory note cannot be varied by parol evidence.

Heency vs. Addy (1910), 2 Ir. R. 688. K. B. D.

A promissory note, bearing an embossed 6d stamp, with the figures £50 in the margin, but no sum stated in the body of the note,—

Held to be, as between the original parties to it, a valid and complete note for £50, there being evidence to shew that they so regarded it, and a finding by the judge that it was given in payment of a debt of £50.

Halsted vs. Herschmann.

An instrument in the following form:—"Winnipeg, June 20th. 1907. Received from A. B., the sum of \$500 advance to be repaid at expiration of 9 months. C. D." is a negotiable promissory note,

and the money payable under it is not attachable by garnishment proceedings before its maturity.

177. Inland Notes.—A note which is, or on the face of it purports to be, both made and payable within Canada, is an inland note.

2. Foreign Note.—Any other note is a foreign note. 53 V., c. 33, s. 82. Eng. s. 83.

Cf. sec. 25 and notes, as to inland and foreign bills.

Pachal vs. Shields, 20 D. L. R. 831.

There is a failure of consideration for a substituted promissory note given by the promisor in exchange for what was represented as his original note, but which was in fact a forgery, his original note having been transferred into other hands.

178. Delivery.—A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer. 53 V., c. 33, s. 83. Eng. s. 84.

By sec. 2, delivery means transfer of possession, actual or constructive, from one person to another. Cf. sec. 39.

179. Joint and Several Notes.—A promissory note may be made by two or more makers, and they may be liable thereon jointly or jointly and severally, according to its tenor:

2. Individual Promise.—Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note. 53 V., c. 33, s. 84. Eng. s. 85.

See *Park vs. Pullisky*, 16 W. L. R. 475 (Alta.).

Cited under sec. 48.

Metropolitan Bank vs. Austin, 2 O. W. N. 868.

Note given by partnership to bank. Partnership converted into joint stock company.

The law respecting joint and joint and several liabilities differs in Quebec from that in force in other parts of Canada. Under the French law in force in Quebec where several persons are jointly liable for a debt, each of them is liable for an equal fractional part to the creditor, whatever may be their respective rights as against each other: Pothier on Obligations. No. 165, 17 Laurent, Nos. 274. 280. Under English law, on the other hand, each joint debtor is liable to the creditor for the whole. If the creditor does not sue all who are alive and in the country, those who are sued might have proceedings stayed until the living joint debtors who are in the country are made parties. A judgment taken against some of the joint debtors frees the others from liability.

The Act has introduced in Quebec the English rule that two or more makers of a note may be liable jointly, or jointly and severally, according to the tenor of the note. (*Noble vs. Forgrave* (1899), Q. R. 17 S. C. 234). But when the question whether the liability is joint or joint and several has been decided, then the appropriate provincial law determines the consequences of such liability, which may be different from the liability at common law. (*Cook vs. Dodds* (1903), 6 O. L. R. 608. Cf. notes to sec. 10.

Where one or two joint makers of a note signs for the accommodation of the other, their relation is that of the principal and

surety, and the prescriptions of 5 years does not apply: *Cullen vs. Bryson*, Q. R., 2 S. C. 36 (1892).

McLarty vs. Havlin, 6 O. W. N. 330.

Promissory note—action against joint and several makers—denial of signatures—allegations of fraud—effect of one or more alleged makers being relieved.

A “joint and several” liability is substantially the same in English and French law. Each of the debtors is liable for the full amount, and on his death his liability descends to his representatives. Payment by one discharges the liability of the others to the creditor. The debtor who has paid may have his right of contribution against his co-debtors. A judgment against one maker is no bar to proceedings against the others: *Re Davidson*, 13 Q. B. D. 53 (1884). If one or more are sued, but not all, those who are sued have no right to delay the plaintiff by having the others called in. *Durocher vs. Lapalme*, M. L. R. 1 S. C. 494 (1885). (MacLaren).

Metropolitan Bank vs. Austin & Graham (1911), 18 O. W. R. 830, 2 O. W. N. 868.

Plaintiffs brought action to recover on partnership note of defendants for \$2,750 payable six weeks after date (30th September, 1910). After giving this note the partnership was converted into a joint stock company which had since assigned for benefit of creditors. Defendants set up that the note was a company note and that plaintiffs should have to rank on estate of the company. *Falconbridge, C. J. K. B. Held*, that the defence failed as plaintiffs had never agreed to accept the company as their debtors. Judgment for plaintiffs for amount of note with interest and costs.

Lafontaine vs. Leveille, 16 Que. K. B. 515.

When A. B. C. & D., shareholders in a company, by way of accommodation to it, become jointly liable for a promissory note, and at maturity it is paid out of the proceeds of a second note signed by A. & B., but not by C. & D., which is ultimately redeemed by the company, no relation of creditor and debtor arises between A. & C. and the former cannot claim to have paid part of C.'s indebtedness. The fact that he holds the note, to which the latter was a party, is no evidence of such a relation, especially when the signatures of all the parties to it have been cancelled and his position of manager of the company makes it likely he is possessed of the note as such. He cannot therefore set up a plea of compensation, founded on the above recited facts, to an action for debt brought against him by C.

180. Demand Note Presentment.—Where a note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement.

2. Reasonable Time.—In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case. 53 V., c. 33, s. 85. Eng. s. 86.

Subject to the proviso to sec. 181, failure to present for payment within a reasonable time releases the endorser.

Cf. sec. 86, as to reasonable time in the case of bills.

As to presentment for payment generally, see notes to secs. 183 and 184.

Robertson vs. N. W. Register Co., 19 Man. L. R. 402 (K. B.).

See sec. 85

181. Endorser Discharged—Security.—If a promissory note payable on demand, which has been endorsed is not presented for payment within a reasonable time the endorser is discharged. Provided that if it has, with the assent of the endorser, been delivered as a collateral or continuing security, it need not be presented for payment so long as it is held as such security. 53 V., c. 33, s. 85. Cf. Eng. s. 86.

Where a demand note is payable with interest, this has been considered as an indication that an early presentment was not contemplated: *Thorn vs. Scovil*, 4 N. B. (2 Kerr) 557 (1844).

Reasonable time appears to be a mixed question of law and fact. Regard must be had to the nature of the instrument as a continuing security, e. g., ten months may not be an unreasonable time: *Chartered Bank vs. Dickson* (1871), L. R. 3 P. C. 579, but presentment of a demand note over three years after it was made is not within reasonable time: *Banque du Peuple vs. Denincourt*, Q. R. 10 S. C. 428 (1897).

Harris Abattoir Co. vs. Maybee & Wilson, 31 O. L. R. 453; 20 D. L. R. 651.

The endorser of a cheque is released by the mere lapse of time if the delay is unreasonable and he need not shew that, if the cheque had been presented sooner, it would have been paid.

182. Not Deemed Overdue.—Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. 53 V., c. 33, s. 85. Eng. s. 86.

A different rule applies to bills; see sec. 70.

A different rule also applies to the presentment of a note in order to charge an endorser, and for that purpose presentment within a reasonable time must be shown (sec. 181).

Northern Crown Bank, 22 O. L. R. 339.

See sec. 70.

183. Presentment, where.—Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place.

2. Liability of Maker.—In such case the maker is not discharged by the omission to present the note for payment on the day that it matures, but if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court.

3. Note Payable Generally.—If no place of payment is specified in the body of the note, presentment or payment is not necessary in order to render the maker liable. 53 V., c. 33, s. 86. Cf. Eng. s. 87.

Cf. sec. 93 which makes similar provisions for presentment of a bill in order to charge the acceptor.

A note payable at a particular place must be there presented

before action brought. As against the endorser it must be presented on the day it falls due. As against the maker it may be presented at any time before action brought, but presentment at some time before action brought must be proved or the action fails. The provision as to costs means that if the maker succeeds, on the ground that no presentment is proved, the court may deprive him of costs. (*Jones vs. England* (1906), 5 West. L. R. 83, following *Warner vs. Symon-Kaye* (1894), 27 N. S. R. 340 in preference to *Merchants Bank vs. Henderson* (1897), 28 O. R. 360).

Union Bank vs. McCullough, 7 D. L. R. 694.

The maker of a note may be sued by the holder without previous presentation of the note. If, however, there were funds available, costs may be awarded against the plaintiff. See cases cited.

Jones vs. England, 7 Terr. L. R. 440.

The holder for collection of a note sued thereon, without prior presentment for payment.

Held, the action properly taken in holder's name, but as there had been no presentment, the action could not be maintained. But the defendant was not given costs, because he did not show that there were funds sufficient to pay note if presented.

Sinclair vs. Deacon (1909), 7 Eastern L. R. 222. (Supreme Court, P. E. I.).

Action by holder of note against maker. Plea, that the affidavit, upon which suit was issued, did not aver presentation and hence discloses no cause for action, as a note payable at a particular place must be presented at the place named, before an action can be maintained on it.

"The better and fuller interpretation of this section appears to me to be, 'you must present the note at the particular place it is made payable, not necessarily—as against the maker—on the day of its maturity, nor indeed, before suit, but if presentment is not made before suit, the costs being in the discretion of the court, the maker will be protected from costs should—for instance—the funds to meet the note have been duly placed by him at the place named.'"

"If this be the correct interpretation of the statute, the affidavit is sufficient, as presentation not being necessary before suit, that statement that it was made is not essential, the one essential, viz., that the note had not been paid, being sworn to."

Robertson vs. Northwestern Register Co., 19 Man. R. 402, 13 W. L. R. 613.

Action by endorsees of promissory note given by defendant company to the payees for value. The plaintiffs took the note during its currency as security for an advance to the payees. The note was payable at the Bank of Hamilton, Winnipeg. At its maturity the secretary-treasurer of defendant company went to the office of the payees and gave them a renewal note without inquiring for the original. The payees then negotiated the renewal note and the defendant company afterwards paid it, the trial judge was satisfied upon the evidence that the original note had been presented for payment before action, but he non-suited the plaintiffs on the ground that they, being shareholders in the payee company, were personally bound by the wrongful action of that company, in taking the renewal note:—

Held, per *Perdue & Cameron*, JJ. A.:—(1) That the non-suit was wrong, as there was nothing to show that the plaintiffs were not holders in due course. (2) That the action of the defendants

in giving the renewal note and subsequently paying it amounted to an acknowledgment that the original note was made with their authority and that they were liable on it. Per Cameron, J. A.:—(1) That under s. 183 of the Act presentment of the note for payment before action was not necessary.

(2) That the defendants were liable on the note although it was not duly made under their by-laws, as innocent holders of negotiable securities are not bound to inquire whether certain preliminaries which ought to have been gone through have actually been gone through. Per Richards, J. A.:—That it was necessary to prove presentment before action, and this had not been done. Per Perdue, J. A.:—That there was sufficient evidence of presentment before action. Appeal allowed and verdict entered for plaintiffs with costs.

184. As to Endorser.—Presentment for payment is necessary in order to render the endorser of a note liable.

2. Place Where.—Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an endorser liable.

3. What Sufficient.—When a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the endorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice. 53 V., c. 33, s. 86. Eng. s. 87.

By virtue of sec. 186 the rules applicable to presentment for payment of a bill (see secs. 85 *et seq.*) apply also to presentment for payment of a note, except in so far as special provision is made as to notes by secs. 180 to 184.

185. Maker—Engagement—Estoppel.—The maker of a promissory note, by making it,—

(a) engages that he will pay it according to its tenor.

(b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse. 53 V., c. 33, s. 87. Eng. s. 88.

The maker of a note, like the acceptor of a bill, is the principal debtor on the instrument, and in the application to notes of the provisions of the Act relating to bills, the maker is deemed to correspond with the acceptor (sec. 186).

As to the contract of the acceptor, see secs. 128 and 129.

Lilly vs. Farrar (1908), 17 Que. K. B. R. 554.

The payee of a promissory note made in the manner set forth in sect. 31, cap. 119 R. S. C. 1906, may, in the same manner as an indorsee, be the party to whom it is negotiated, as well as issued, and a holder in due course, within the meaning of the following section 32, and of section 56.

McKay vs. Gord and Rochester, 8 O. W. N. 296.

Promissory note—evidence—interest.

Royal Bank of Canada vs. Smith, 6 O. W. N. 605.

Promissory notes—indebtedness of makers to payee—findings of trial judge against plea that notes made for accommodation of payee—third party issues—indemnity—judgment—enforcement.

Sparrow vs. Corbett, 18 B. C. R. 356.

A promise to pay a promissory note after it has fallen due is *prima facie* evidence of presentment. (*Deering vs. Hayden*, 3 Man. L. R. 219, followed.).

Canadian Bank of Commerce vs. Bellamy, 25 D. L. R. 133; 8 S. L. R. 381.

Under section 183, a failure to make presentment of payment of a note at the place specified therein does not necessarily discharge the maker from liability on the note; but if upon an action on the note before presentation it appears that there were sufficient funds available at the place of payment to satisfy the note if it had been presented, the Court may award the costs of the action against the plaintiff.

Johnston vs. L'Heureux, 27 W. L. R. 21.

Held, following *Jones vs. England*, 5 W. L. R. 83, that, unless the note was presented for payment, the maker was not liable upon it; but, there being no evidence that the note was not presented for payment at the bank at which it was payable, which was the same bank to which it had been endorsed, it might be assumed that the note was there when it fell due, ready for delivery to the maker upon payment; and this would constitute a sufficient representment to comply with s. 183.

186. Application of Act to Notes.—Subject to the provisions of this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

2. Terms Corresponding.—In the application of such provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

3. Provisions Inapplicable.—The provisions of this Act as to bills relating to,—

(a) presentment for acceptance;

(b) acceptance;

(c) acceptance *supra* protest;

(d) bills in a set;

do not apply to notes. 53 V., c. 33, s. 88. Eng. s. 89.

Canadian Bank of Commerce vs. Rogers (1911), 18 O. W. R. 401. 2 O. W. N. 627, 769, O. L. R.

Plaintiffs brought three separate actions against the defendants to recover upon three promissory notes made by defendants in favour of the International Snow Plough Co., of Oklahoma, which had been endorsed in favour of plaintiff bank. Defendants alleged fraud and misrepresentation on the part of the International Snow Plow Co., in which they purchased stock, giving above notes in payment. Divisional Court—*Held*, that at the time the notes were given the company held no license to do business in Ontario, therefore they were not enforceable in any court so long as that illegality existed; That while defendants, as makers of the notes, were precluded, by Bills of Exchange Act, R. S. O. (1906), c. 119, s. 185, from denying to a holder in due course the existence of the payee and his

then capacity to endorse, yet, above section must be read with s. 58 (made applicable to notes by s. 186), which provides that if it is proved that the instrument is affected with illegality, the burden of proof is on plaintiff to show that he gave value in good faith without notice of the illegality and that plaintiffs had not discharged that onus: That the fact that the company obtained a license to do business in Ontario, before the actions were brought, had a curative and retroactive effect on the notes which removed the above illegality and there was no obstacle on plaintiff's right to recover.—Judgment for plaintiffs with costs. Judgment of Riddell, J., 16 O. W. R. 968, 2. O. W. N. 45, affirmed.

187. Protest of Foreign Notes.—Where a foreign note is dishonoured, protest thereof is unnecessary, except for the preservation of the liabilities of endorsers. 53 V., c. 33, s. 88. Cf. Eng. s. 89.

As to the necessity for protest of inland bills and notes, see secs. 113 and 114. Cf. sec. 112, as to protest of a foreign bill.

If a note is dishonoured out of Canada the necessity for or sufficiency of a protest or notice of dishonour is determined by the law of the place where the bill is dishonoured (sec. 162).

A note which does not on the face of it purport to be both made and payable in Canada is a foreign note (sec. 177).

FORM A.

NOTING FOR NON-ACCEPTANCE.

(Copy of Bill and Endorsements).

On the 19, , the above bill was, by me, at the request of , presented for acceptance to E. F., the drawee, personally (*or*, at his residence, office or usual place of business), in the city, town, *or* village) of and I received for answer “ ”; The said bill is therefore noted for non-acceptance.

A. B.,

Notary Public.

(Date and Place.)

19 .

Due notice of the above was by me served upon

the { drawer } personally, on the { } day of { }
 { indorser }
 (or. at his residence, office or usual place of business) in
 on the { } day of { } or, by deposit-
 ing such notice, directed to him, at { }, in His Majesty's
 post-office in the city (town or village), on the { } day
 of { }, and prepaying the postage thereon.

A. B.,

Notary Public.

(Date and Place.)

19 .

53 V., c. 33, sch. form A.

FORM B.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL
PAYABLE GENERALLY.

(Copy of Bill and Indorsements).

On this _____ day of _____, in the year 19____, I, A. B., notary public for the Province of _____, dwelling at _____, in the Province of _____, at the request of _____, did exhibit the original bill of exchange whereof a true copy is above written, unto E. F., the { drawee } thereof, personally (or, at his residence, office or usual place of business), in _____, and speaking to himself (or his wife, his clerk, or his servant, &c.). did demand { acceptance } thereof; unto _____ { payment } which demand { he } { she } answered: “ _____.”

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and indorsers (*or* drawer and indorsers) of the said bill. and all other parties thereto or therein concerned for all exchange, re-exchange, and all costs, damages and interest, present and to come for want of { acceptance } of the said bill.
{ payment }

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,

53 V., c. 33, sch. form B.

Notary Public.

FORM C.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL

PAYABLE AT A STATED PLACE.

(Copy of Bill and Indorsements).

On this _____ day of _____, in the year 19____, I, A. B., notary public for the Province of _____, dwelling at _____, in the Province of _____, at the request of _____, did exhibit the original bill of exchange whereof a true copy is above written, unto E. F., the { drawee } thereof { acceptor }, at _____, being the stated place where the said bill is payable, and there, speaking to _____, did demand { acceptance } { payment } of the said bill; unto which demand he answered: “ _____ ”

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor.

drawer and indorsers (or drawer and indorsers) of the said bill, and all other parties thereto or therein concerned for all exchange, re-exchange, costs, damages and interest, present and to come, for want of { acceptance }
{ payment } of the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,

53 V., c. 33, sch. form C.

Notary Public.

FORM D.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PROTESTED
FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, and begin with the words, "and afterwards on &c.," continuing as in the last preceding form, but introducing between the words "did" and "exhibit" the word "again," and, in a parenthesis, between the words "written" and "unto," the words: "and which bill was by me duly noted for non-acceptance on the
day of

But if the protest is not made by the same notary, then it should follow a copy of the original bill and indorsements and noting marked on the bill—and then in the protest introduce in a parenthesis between the words “written” and “unto,” the words “and which bill was on the day of , by , notary public for the Province of , noted for non-acceptance, as appears by his note thereof marked on the said bill.”

53 V., c. 33, sch. form D.

FORM E.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(Copy of Bill and Indorsements).

On this _____ day of _____, in the year 19____, I,
A. B., notary public for the Province of _____, dwelling
at _____, in the Province of _____, at the request
of _____, did exhibit the original promissory note, where-
of a true copy is above written, unto _____, the
promisor, personally (*or*, at his residence, office *or* usual place of
business), in _____, and speaking to himself (*or* his
wife, his clerk *or* his servant, &c.), did demand payment thereof;
unto which demand { he } answered: “ _____,”
 { she }

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor

and indorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,

Notary Public.

53 V. c. 33, sch. form E.

FORM F.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

(Copy of Bill and Indorsements).

On this day of , in the year 19 , I,
A. B., notary public for the Province of , dwelling
at , in the Province of , at the request
of , did exhibit the original promissory note, where-
of a true copy is above written, unto the promisor.
at , being the stated place where the said note
is payable, and there, speaking to , did demand
payment of the said note, unto which demand he answered: “

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and indorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,

53 V., c. 33, sch. form F.

Notary Public.

FORM G.

NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST FOR NON-ACCEPTANCE,
OR OF A PROTEST FOR NON-PAYMENT OF A BILL.

(Place and Date of Noting or of Protest.)

1st. To P. Q. (*the drawer.*)
at Sir,
Your bill of exchange for \$, dated at
the day of upon E. F., in favor of C. D.,
payable days after { sight } was this day, at the request of
{ date }
duly { noted } by me for { non-acceptance
{ protested } non-payment.

A. B.,

Notary Public.

BILLS OF EXCHANGE ACT.

(Place and Date of Noting or of Protest).

2nd.

To C. D. (indorser),
(or F. G.)

at

Sir,

Mr. M. Q.'s bill of exchange for \$, dated at
the day of upon E. F., in your favor (or
in favor of C. D.) payable days after { sight }
{ date } and by
you indorsed, was this day, at the request of
duly { noted } by me for { non-acceptance. }
{ protested } { non-payment. }

A. B.,

53 V., c. 33, sch., form G.

*Notary Public.***FORM H.**

NOTARIAL NOTICE OF PROTEST FOR NON-PAYMENT OF A NOTE.

(Place and Date of Protest.)

To

at

Sir,

Mr. P. Q.'s promissory note for \$. dated at
the day of payable { days }
{ month } after date to
on—

you }
E. F., } or order, and indorsed by you, was this day,
at the request of , duly protested by
me for non-payment.

A. B.,

53 V., c. 33, sch. form H.

*Notary Public.***FORM I.**NOTARIAL SERVICE OF NOTICE OF A PROTEST FOR NON-ACCEPTANCE OR
PAYMENT OF A BILL, OR NOTE.*(To be subjoined to the Protest).*

And afterwards I, the aforesaid protesting notary public, did
serve due notice, in the form prescribed by law, of the foregoing
protest for { non-acceptance } of the { bill } thereby protested
{ non-payment } { note }
upon { P. Q } the { indorsers } personally, on the day
{ C. D. } { drawers }

of (*or*, at his residence, office *or* usual place of business) in
 , on the day of ; (*or*
 by depositing such notice, directed to the said { P. Q. }
 { C. D. }
 at , in His Majesty's post-office in
 on the day of , and prepaying
 the postage thereon).

In testimony whereof, I have, on the last mentioned day and
 year, at aforesaid, signed these presents.

A. B.,

Notary Public.

53 V., c. 33, sch. form I.

FORM J.

PROTEST BY A JUSTICE OF THE PEACE (WHERE THERE IS NO NOTARY)
 FOR NON-ACCEPTANCE OF A BILL OR NON-PAYMENT OF A BILL
 OR NOTE.

(*Copy of Bill or Note and Indorsements.*)

On this day of , in the year 19 , I,
 N. O., one of His Majesty's justices of the peace for the district (*or*
 county, &c.), of , in the Province of
 dwelling at (*or near*) the village of , in the said dis-
 trict, there being no practicing notary public at *or near* the said
 village (*or any other legal cause*), did, at the request of
 and in the presence of
 well known unto me, exhibit the

original { bill }
 { note } whereof a true copy is above written unto

P. Q., the { drawer }
 { acceptor } thereof, personally (*or* at his residence,
 promisor
 office, *or* usual place of business) in and
 speaking to himself (his wife, his clerk, *or* his servant, &c.), did
 demand { acceptance } thereof, unto which demand { she
 { payment } answered: " "

Wherefore I, the said justice of the peace, at the request afore-
 said, have protested, and by these presents do protest against the
 { drawer and indorsers }
 { promisor, and indorsers } of the said
 { acceptor, drawer and indorsers }

{ bill }
 { note } and all other parties thereto and therein con-
 cerned for all exchange, re-exchange, and all costs, damages and
 interest, present and to come, for want of { acceptance }
 { payment } of
 the said { bill }
 { note }

All of which is by these presents attested by the signature of the said (*the witness*) and by my hand and seal.

(Protested in duplicate.)

(*Signature of the witness.*)

(*Signature and seal of the J. P.*)

53 V., c. 33, sch. form J.

NATIONAL TRUST COMPANY LIMITED

Paid-Up Capital	-	-	-	\$1,500,000
Reserve Fund	-	-	-	1,500,000

BOARD OF DIRECTORS:

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J. W. FLAVELLE

VICE-PRESIDENTS

Z. A. LASH, K.C., LL.D.

E. R. WOOD

HON. JUSTICE BRITTON

GEO. H. WATSON, K.C.

CHESTER D. MASSEY

ELIAS ROGERS

ALEX. BRUCE, K.C.

H. H. FUDGER

C. H. COX

H. B. WALKER

HON. SIR EDWARD KEMP, K.C.M.G.

J. H. PLUMMER

HON. F. H. PHIPPEN, K.C.

HENRY J. FULLER

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HON. SIR LYMAN MELVIN JAMES

JOHN AIRD

J. W. WOODS

J. HARRINGTON WALKER

HEAD OFFICE:

18-22 KING STREET EAST, TORONTO, ONT.

W. E. RUNDLE, General Manager

MONTREAL OFFICE:

PERCIVAL MOLSON, Manager

OTHER OFFICES:

Winnipeg, Manitoba	.	.	.	D. H. Cooper, Manager
Edmonton, Alta.	.	.	.	A. E. Scrace, "
Saskatoon, Sask.	.	.	.	J. D. Gunn, "
Regina, Sask.	.	.	.	W. G. Styles, "

AGENTS IN GREAT BRITAIN:

Messrs. Thomson, Dickson & Shaw, W.S., 1 Thistle Court, Edinburgh, Scotland
Messrs. Finlayson, Auld & Mackechnie, Writers, 144 St. Vincent St., Glasgow, Scotland

LONDON REPRESENTATIVE:

A. L. NUNNS, 28 Bishopsgate London, E.C., England.

(It is believed that the following will be found to be the most complete Table of Descents ever published in this Province.)

TABLE OF DESCENTS IN THE PROVINCE OF ONTARIO, ANNOTATED by the late A. H. MARSH, K.C.

MEM. The References to Williams on Executors are to the 9th Edition of that work. The Statute of Distributions (22 and 23 Car. II., cap. 10) as amended by 1 Jac. II., cap. 17, has now been re-enacted in this Province by R.S.O. cap. 335.

If the intestate dies leaving:—

His real and personal estate will beneficially devolve thus:—

1	No relatives.	All to the Crown subject to the rights of creditors. See R. S. O., cap. 70 and cap. 114.
2	No wife or child, or legal representative of a child.	Equally to every of the next of kindred of the intestate, who are in equal degree, and those who legally represent them:—22 and 23 Car. II., cap. 10, ss. 3 and 4. As to legal representative, see Wms. on Ex. 1366. As to ascertaining who are the "next of kin," see Wms. on Ex. 1377 and 355, and Howell's Surrogate Practice (2nd Ed.) 126 <i>et seq.</i> and 147.
3	Wife only.	<p>\$1,000 to wife where husband dies leaving a "widow but no issue" (R. S. O., cap. 127, sec. 12). See <i>Stinclair vs. Brown</i>, 29 O. R. 370. This right of a wife to \$1,000 arises only in the event of intestacy and not in the case of partial intestacy. <i>Re Harrison</i>, 2 O. L. R., 217; and in <i>Re Ford</i>, 1902, 2 Ch. 605. Half of balance to wife. Residue equally to every of the next of kindred of the intestate, who are in equal degree, and those who legally represent them:—22 and 23 Car. II., cap. 10, sec. 3. As to legal representatives and next of kin, see note to No. 2 above. If no next of kin then the residue goes to the Crown. See R. S. O., cap. 70.</p> <p>The wife may elect under the provisions of R. S. O., cap. 127, sec. 4 (2) to take the interest above indicated in lieu of her dower, and unless she so elects she will not be entitled to the said interest, but will, in addition to her dower, be entitled only to the said sum of \$1,000 and to her rights given her by 23 and 24 Car. II., cap. 10, sec. 3, namely, to one-half of her husband's <i>personal estate</i> if there are no issue, and to one-third thereof if there are issue of the last or any former marriage.</p> <p>The goods of a deceased person which are exempt from seizure under execution are not, except as to funeral and testamentary expenses, assets in the hands of his executors for the payment of debts. The effect of R. S. O., cap. 77, sec. 4 is to give his widow a parliamentary title thereto, "for the benefit of herself and the family of the debtor," or, "if there is no widow, the family of the debtor shall be entitled to the exempted goods." <i>Re Tatham</i>, 2 O. L. R., 343.</p> <p>This right of the widow exists even though the husband has disposed of the goods by his will, S. C.</p>

If the intestate dies leaving.

His real and personal estate will beneficially devolve thus:

4	Wife and child or children and legal representatives of deceased children.	One-third to wife. Residue equally <i>per stirpes</i> to child or children and legal representatives (that is lineal descendants, see Wms. on Ex. 1366) of deceased children. Any child (not being heir at law) receiving estate by settlement or advancement in the lifetime of an intestate father (not mother), shall bring the same into hotch potch. See 22 and 23 Car. II., cap. 10, sec. 3. As to advancement, see Wms. on Ex. 1369. See also as to advancements R. S. O., cap. 127, sections 60-63 and R. S. O., cap. 335, sec. 2. The deceased is intestate within the meaning of the statute if he leaves a will which is impugned. <i>Re Ford</i> , 1902, 2 Ch. 665. The rule as to advancements does not apply to a partial intestacy. <i>Re Roby</i> , 1908, 1 Ch. 71. As to wife's right to dower, and as to the right to goods of the deceased which are exempt from seizure under execution, see note to No. 3 above.
5	Wife and grandchildren.	One-third to wife. Residue equally to grandchildren, see note to No. 4 above. Whether the distribution in such case would be <i>per stirpes</i> or <i>per capita</i> has not been determined by any Appellate Court. See Wms. on Ex. 1367-8, and criticism there of <i>Re Natf</i> , 37 Chy. D. 517. As to wife's right to dower and as to the right to goods of the deceased which are exempt from seizure under execution, see Note to No. 3 above.
6	Wife and father.	Half to wife. Residue to father. See 22 and 23 Car. II., cap. 10, sec. 3. As to wife's right to dower and her interest in \$1,000 and as to the right to goods of the deceased which are exempt from seizure under execution, see note to No. 3 above.
7	Wife and mother.	Half to wife. Residue to mother. See 22 and 23 Car. II., cap. 10, sec. 3; 1 Jac. II., cap. 17, sec. 7; and Wms. on Ex. 1378 and 1380. As to wife's right to dower and her interest in \$1,000, and as to the right to goods of the debtor which are exempt from seizure under execution see note to No. 3 above.
8	Wife, father, brother, sister, and nieces and nephews (being children of deceased brothers and sisters).	Half to wife. Residue equally to father, mother, brother and sister, and to nephews and nieces, but the nephews and nieces take <i>per stirpes</i> , each representative or set of representatives of a deceased brother or sister respectively taking that equal share which would have been taken by the brother or sister if living. See 22 and 23 Car. II., cap. 10, ss. 3 and 4; R. S. O., cap. 127, sec. 6; Wms. on Ex. 1378-9, 1384; <i>Walker v. Allen</i> , 24 App. R. 336, overruling <i>Re Colquhoun</i> , 26 O. R. 104, <i>Re Wagner</i> , 6 O. L. R. 680. As to wife's right to dower and her interest in \$1,000, and as to the right to goods of the deceased which are exempt from seizure under execution see note to No. 3 above.
9	Wife, mother, and children of deceased brothers and sisters.	Half to wife. Residue to be equally divided between the mother and each representative or set of representatives of the deceased brothers and sisters respectively, the said representative or set of representatives standing for this purpose in the shoes of the deceased brother or sister whom they respectively represent; but the nephew and nieces, as between themselves, take <i>per capita</i> because all of the brothers and sisters were deceased at the death of the intestate; the distribution would be <i>per stirpes</i> if some of the brothers or sisters were living and the others were dead leaving children. This solution is submitted, but is perhaps arguable. See references given in No. 8 above. As to wife's right to dower and to the right to goods of the deceased which are exempt from seizure under execution, see note to No. 3 above.

If the intestate dies leaving:—	His real and personal estate will beneficially devolve thus:—
10 Wife, mother, brothers and sisters.	<p>Half to wife. Residue to be equally divided between the mother, brothers and sisters. See references given in No. 8 above. As to wife's right to dower and her interest in \$1,000 and as to the right to goods of the deceased which are exempt from seizure under execution, see note to No. 3 above.</p>
11 Wife, brothers and sisters, and children of deceased brothers and sisters.	<p>Half to wife. Residue to be equally divided between the brothers and sisters and each representative or set of representatives of the deceased brothers and sisters respectively. The brothers and sisters taking <i>per capita</i> and the nephews and nieces taking <i>per stirpes</i>. See references given in No. 8 above, and see note to No. 9 above. As to wife's right to dower and her interest in \$1,000 and as to the right to goods of the deceased which are exempt from seizure under execution, see note to No. 3 above.</p>
12 Husband only.	<p>Half to husband. Residue as if husband had predeceased his wife, i.e., the residue goes to the next of kindred of the intestate under the provisions of the Statute of Distributions applicable to an unmarried woman. See R. S. O., cap. 127, sec. 5. If no next of kin then the residue goes to the Crown. See R. S. O., cap. 127, sec. 5 and cap. 70. The above is subject to the right of a husband entitled as tenant by the courtesy to exercise the power given by R. S. O., cap. 4 (3), in which case he would appear to be entitled not only to his tenancy by the courtesy, but also to administer the whole of his wife's <i>personally</i> for his own benefit. See the said Section and see <i>Lamb vs. Cleaveland</i>, 19 S. C. R. at p. 83 <i>et seq.</i>, and at p. 86 <i>et seq.</i></p>
13 Husband and child or children, or issue of deceased children.	<p>One-third to husband. Residue to be divided equally between the children. See R. S. O., cap. 127, sec. 5. If any of the children have died leaving issue, the latter take by representation. Since the repeal of sec. 23 of cap. 132, of R. S. O. (1887), by sec. 32 of 60 Vic., cap. 14, it would appear that the husband, when entitled as tenant by the courtesy, may exercise the statutory powers mentioned in the answer to No. 12 above, as fully in the case where there are children living as where there are no children living, for the said power overrides the provisions of sec. 5 of R. S. O., cap. 127. See a contrary opinion expressed in an article in 35 Can. L. J. 94, the writer of which, however, does not appear to attach sufficient importance to the fact that the power given by sec. 4 (3) of R. S. O., cap. 127 overrides the provisions of sec. 5; and that sec. 23 of the M. W. P. Act as consolidated in the revision of 1887 has now been repealed; and that the effect thereof is to throw the husband back upon his rights under the Stat. of Distributions (as explained by 29 Can. L. J., cap. 3, ser. 24), by virtue of which he is entitled to administration of her personal estate for his own benefit. See <i>Lamb vs. Cleaveland</i>, 19 S. C. R. at p. 83 <i>et seq.</i>, and at page 86 <i>et seq.</i> As to the case where there has been any settlement or advancement see note to No. 1 above. <i>Quære</i>, whether R. S. O., cap. 127, sec. 60-63 applies to a settlement or advancement by a mother.</p>
14 Child, children or their legal representatives.	<p>All to him, her or them. "Legal representatives" in this case means lineal descendants. Wms., on Ex. 1306. As to distribution being <i>per stirpes</i> or <i>per capita</i>, see Wms., on Ex. 1367-8. As to case where there has been a settlement or advancement by father, see note to No. 4 above. As to the right to goods of the deceased which are exempt from seizure under execution see note to No. 3 above.</p>

If the intestate dies leaving:—		His real and personal estate will beneficially devolve thus:—
15	Children by two wives or children by two husbands.	Equally to all, as they are equally near of kin to the intestate. As to case where there has been a settlement or advancement by father, see note to No. 4 above. As to the right to goods of the deceased which are exempt from seizure under execution, see note to No. 3 above.
16	Child and grandchild (being child of a deceased child).	Half to child. Residue to grandchild, who takes by representation. See 22 and 23 Car. II., cap. 10, sec. 3 first clause. As to case where there has been a settlement or advancement by father, see note to No. 4 above. As to the right to goods of the deceased which are exempt from seizure under execution, see note to No. 3 above.
17	Father only.	All. See Wms. on Ex. 1377.
18	Father and wife.	Half to father. Residue to wife. See 22 and 23 Car. II., cap. 10, sec. 3.
19	Father and mother.	Half to father. Residue to mother. See R. S. O., cap. 127, sec. 6.
20	Father or mother (or father and mother) and brothers and sisters.	Equally to all. See Wms. on Ex. 1378; and R. S. O., cap. 127, sec. 6.
21	Father and children of deceased brothers and sisters.	To be equally divided between the father and each representative or set of representatives of the deceased brothers and sisters respectively, the said representative or set of representatives standing for this purpose in the shoes of the deceased brother or sister whom they respectively represent. The distribution as between the children would be <i>per capita</i> . See answer to No. 9 above.
22	Father and grandchildren of deceased brothers and sisters.	All to the father. By the Statute of Distributions, it is provided "that there be no representatives admitted among collaterals after brother's and sister's children." 22 and 23 Car. II., cap. 10, sec. 4; and see Wms. on Ex. 1383-84; and <i>Crocher vs. Carthra</i> , 1 O. R. 128; and see <i>Re Adams</i> 2 O. W. R. 1156; 6 O. L. R. 637; <i>Re McEachern</i> 10 O. L. R. 499.
23	Mother only.	The mother takes the whole. See Wms. on Ex. 1380 and 1378.
24	Mother and wife.	Half to wife. Residue to mother. See No. 7 above.
25	Mother and brothers and sisters.	To be equally divided between them. See 1 Jac. II., cap. 17, sec. 7; and see Wms. on Ex. 1378.
26	Mother and children of deceased brothers and sisters.	To be equally divided between the mother and each representative or set of representatives of the deceased brothers and sisters respectively, the said representative or set of representatives standing for this purpose in the shoes of the deceased brother or sister whom they respectively represent. The distribution between the children would be <i>per capita</i> . See answer to No. 9 above.
27	Mother and grandchildren of deceased brothers and sisters.	All to mother, for reasons given in answer to No. 22 above.

If the intestate dies leaving:—		His real and personal estate will beneficially devolve thus:—
28	Brother and sister only.	Would take all as next of kin under 22 and 23 Car. II., cap. 10, sec. 4.
29	Brothers and sisters of whole blood and brothers and sisters of half blood.	All take equally. See Wms. on Ex. 1367, 1382-3; and see <i>Re Adams</i> 6, O, L. R. 697 and <i>Re Wagner</i> , 6 O, L. R. 680.
30	Brother or sister (posthumous) and mother.	Equally to both. See Wms. on Ex. 1378, 1367, 1383.
31	Brother or sister (posthumous) and brother or sister born in the lifetime of father.	Equally to both. See Wms. on Ex. 1367, 1383.
32	Brothers and sisters and wife.	Half to wife. Residue to brothers and sisters equally, 22 and 23 Car. II., cap. 10, sec. 3.
33	Brothers and sisters and nephews and nieces (being children of deceased brothers and sisters).	To be divided equally between the brothers and sisters and each representative or set of representatives of the deceased brothers and sisters respectively; the brothers and sisters taking <i>per capita</i> and the nephews and nieces taking <i>per stirpes</i> . See references given in No. 8 above; and see note to No. 9 above.
34	Brother or sister and grandfather or grandmother.	The brother or sister takes all to the exclusion of the grandfather or grandmother, although they are of equal degrees of kinship. See Wms. on Ex. 1381.
35	Grandfather or grandmother (being father's mother or father) and grandfather or grandmother (being mother's father or mother).	To be equally divided between them. See Wms. on Ex. 1382.
36	Grandfather and grandmother on either father's or mother's side.	To be divided equally between them. This solution is submitted although there is apparently no reported decision on the point. Under the old law the grandfather would have taken all by virtue of his marital right in the same way that under the old law the father would have taken to the exclusion of the mother; but <i>essantia rationis legis ipsa loquitur</i> . See 1 L. Q. Rev. 179-80.
37	Grandfather or grandmother and uncle or aunt.	All to grandfather or grandmother as being nearer of kin. See Wms. on Ex. 1382.
38	Grandfather or grandmother and brother or sister.	See answer to No. 34 above.
39	Uncles and aunts (whether on father's or mother's side or both) and nephews and nieces (being sons and daughters of deceased brothers and sisters).	To be equally divided between them, as being in equal degree of kinship. See Wms. on Ex. 1382.

If the intestate dies leaving:—		His real and personal estate will beneficially devolve thus:—	
40	Uncles and aunts and children of deceased uncles and aunts.	All to uncles and aunts for the reason given in the answer of No. 22 above.	
41	Uncles and aunts and grandfather and grandmother.	See answer to No. 37 above.	
42	Nephews and nieces by deceased brother and nephew by deceased sister.	To be divided equally between them as being in equal degree of kinship, 22 and 23 Car. II., cap. 10, sec. 4. They take <i>per capita</i> and not <i>per stirpes</i> , for reasons given in answer to No. 9 above.	
43	Nephew by brother and nephew by half sister.	To be equally divided between them. See Wms. on Ex. 1382-3.	
44	Nephews, nieces, brothers, and sisters.	See No. 33 above.	
45	Nephews and nieces and brother's or sister's grandson.	All to nephews and nieces equally for the reasons given in answer to No. 22 above.	
46	Nephews, nieces, father and mother.	To be equally divided between the father, mother and each representative or set of representatives of the deceased brothers and sisters respectively (parents of the nephews and nieces), so that each representative or set of representatives of a deceased brother or sister shall take that equal share which would have been taken by the brother or sister if living. As between themselves the nephews and nieces take <i>per capita</i> . See references given in No. 8 above and reasons given in No. 9 above.	
47	Nephews, nieces, uncles and aunts.	See No. 39 above.	
48	Nephews, nieces, wife, father, mother, brother and sister.	See No. 8 above.	
49	Nephews, nieces, wife and mother.	See No. 9 above.	
50	Cousins of same degree, however remote.	Equally <i>per capita</i> . The provision in the Statute of Distributions against remoteness of representation, set forth in the answer to No. 22 above, does not apply unless there is some one nearer of kin than the one against whom the provision is invoked. Among collateral relatives of the same degree there is equal distribution. They take in their own right and not by way of representation. And there is no question of quantity or quality of blood; those of the half blood take equally with those of the whole blood or those of the double blood (e. g. cousins related to the intestate through both his father and his mother). <i>Re Adams</i> , 6 O. L. R. 697, and <i>Re Wagner</i> 6 O. L. R. 680.	
51	Cousins (being children of deceased uncles or aunts) and brother's or sister's grandchildren.	Equally <i>per capita</i> , they being in equal degree of kindred. See answer to No. 2 above and references there given. They take <i>per capita</i> and not <i>per stirpes</i> for reasons given in No. 22 above.	
52	Cousins (being children of deceased uncles and aunts) and uncles and aunts.	All to uncles and aunts, for the reason given in No. 22 above.	

EPITOME OF THE LAW RELATING TO MARRIED WOMEN

BY THE LATE A. H. MARSH, K.C.

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PROVINCE OF ONTARIO

HISTORICAL:

Common Law touching Married Women's Property.—In order to adequately understand the application of the doctrines of Equity and the statutory provisions which at present govern married women's property rights in this Province, it is necessary to have some understanding of the common law of England touching the subject, which common law was introduced into the Province by the first Act of Parliament of Upper Canada in 1792.

The mere fact of marriage operated at common law to vest in the husband certain rights in the property which was owned by the wife at the time of her marriage, or which was subsequently acquired by her during coverture. The chief of these rights were the following,—As to her freehold real estate of which she was seised, he was entitled so long as he lived and during her lifetime to receive the rents and profits thereof for his own benefit; and if he survived her he became entitled to the rents and profits thereof during the remainder of his lifetime, provided, however, that in the latter case issue of the marriage was born alive during the wife's lifetime, which issue might by possibility have inherited the land in question.

As to her personal estate the matter was somewhat more complicated. Her personal chattels in possession vested absolutely in her husband. As to her choses in action, including all her personal chattels not in possession, he became entitled to reduce them into possession during the coverture, and if the wife predeceased him he became entitled to administer her estate, and as such administrator to reduce them into his possession, in either of which cases the property became his absolutely. As to her chattels real, that is, any interest in real estate less than a freehold interest (confined in this Province to leasehold interests), he became entitled at any time during his lifetime to sell and dispose of the same for his own benefit.

Equitable Doctrine of Separate use.—The unjust rigour of the common law induced the Court of Equity in England to invent the equitable doctrine of separate use, touching married women's property, and that doctrine became part of the law of this Province when a Court of Chancery was first established here. The effect of this doctrine is that a woman may acquire an equitable estate in either real or personal property, whether the same is acquired before or after coverture, and the same is known as her equitable separate estate. Over this separate estate her husband has no power or control; but she has all the powers of enjoyment and disposition thereof which would be possessed by an unmarried woman; although, in so far as her rights depend upon this equitable doctrine, her said powers of disposition are confined, in the case of realty, to the equitable estate, and she is therefore unable, by virtue of the equitable doctrine, to sell or dispose of the legal estate in settled lands without the concurrence of the trustee in whom such legal estate is vested. If no trustee is expressly named, then a constructive trust is fastened by the court upon her husband, and he, in accordance with the doctrines of equity, becomes a trustee of the legal estate for the benefit of his wife. No technical word or set of words is necessary in order to raise a case for the application of the doctrines as to a married woman's equitable separate estate,

provided always that it is made clear that her husband is not intended to have any power of enjoyment or disposition of the property in question, and that she is intended to have such power or enjoyment and disposition. A common form of words used for this purpose is "For the sole and separate use of the said A. B. free from 'the custody or control of her present or any future husband.'"

"It is common knowledge that it was and is usual to give the 'income of property during the whole life of a woman for her 'separate use, though the separate use is sometimes limited to a 'particular coverture, as in *Stogdon vs. Lee* (1891), 1 Q. B. 661. "There is no difficulty in attaching a separate use either to the 'complete life interest, or even to an estate in fee; *Baggett vs. Meux* "(1 Coll. 138); or to an absolute interest in personal estate; *In re Grey's Settlement* (34 Chy. D. 712). In the well-known case of "*Tullett vs. Armstrong* (1 Beav. 1; My. & Cr. 390), it was finally "decided that, under a limitation to a woman during her life for her "separate use without power of anticipation, the separate use, and "also the restraint upon anticipation, would become operative under "and by virtue of the original limitation in the event of a second "marriage. Lord Langdale treated the separate use as 'suspended' "and having no operation while the woman is discovert, though it "is capable of arising upon the happening of a marriage; *Tullett vs. Armstrong* (1 Beav. 32-3). Lord Cottenham expressly negatived "the idea that a new separate estate arises on the second marriage, "and asserts that the old separate estate continues through the "second coverture (4 My. & Cr. 405)."

Per Cozens-Hardy, J., in re Wheeler's Settlement Trusts, 1899, 2 Ch. at p. 721.

When the Courts of Equity allowed a married woman by virtue of the doctrine aforesaid to enjoy and dispose of her separate estate for her own benefit, they also gave her the power to charge her separate estate and make it liable for the payment of debts incurred by her. Originally the court granted this power far more for the benefit of the married woman than for the protection of her creditors, and it was only her specialty debts, incurred with respect to her separate estate which became a charge thereon. This rule became from time to time relaxed until at the present time the doctrine of the court is that where a married woman who has separate estate contracts a debt she is *prima facie* deemed in equity to have contracted it with reference to her separate estate, and, if she had the power to dispose of that separate estate, equity will make it liable for the payment of the said debt. See *Lawson vs. Laidlaw*, 3 App. R. 77.

The separate property may, however, be of such a character as to raise a counter presumption that her indebtedness was not contracted with reference to that separate property, as, for example, her clothes (*Leak vs. Driffield*, L. R., 24 Q. B. D. 98), or an engagement ring, or a watch of small value (*Abraham vs. Hacking*, 27 O. R. 431).

"Separate estate may be said to exist notwithstanding discover-ture. It is 'suspended' in this sense—that the widow's power of "disposition over it is the same as if it had been given to her simply "and without words creating a separate use. It is not extinct, "because it becomes operative upon a second marriage. If the "coverture ends by her death, it is still regarded as her separate "estate, and is applied in satisfaction of her debts and liabilities. "If the coverture ends by her husband's death, the same principle "ought to apply."

Per Cozens-Hardy, J., in re Wheeler's Settlement Trusts, 1899, 2 Ch. at p. 722.

Although a married woman has the power to alienate her separate estate and to make it liable for her debts as already mentioned, yet this power may be greatly curbed by utilizing, in the settlement of the property, another equity doctrine known as Restraint upon Anticipation, which doctrine will be dealt with further on in this Article.

Legislation as to Married Women's Property.—If the equitable doctrines, relating to the right of a married woman to enjoy and dispose of her separate estate, had been applicable to her property generally, and had not been confined to property which was settled to her separate use, there would have been little or no need for any legislative interference with this branch of the law; but as a large proportion of the property owned by women at the time of their marriage, or subsequently acquired by them, was not settled to their separate use, it became necessary for the legislature to modify the semi-barbarous provisions of the common law, and to extend the benign doctrines of equity so as to make those doctrines, or something closely analogous thereto, apply to a more comprehensive classification of property than that falling within the definition of equitable separate estate. Accordingly the legislature intervened, and by a series of Acts, commonly spoken of as The Married Women's Property Acts, effected a legislative settlement of numerous classes of married women's property which property so settled is now spoken of as statutory separate estate, as contra-distinguished from equitable separate estate.

This legislation has left the equitable doctrine as to separate estate untouched (see R. S. O. 1897, cap. 163, sec. 21) and the question therefore arises in each case whether the property in question is equitable separate estate, and it is only when this question is answered in the negative that an appeal is made to the legislation to discover whether it is statutory separate estate.

There is probably no other class of legislation in which the evident intent of the legislature was so completely and so persistently defeated by the narrow technical astuteness of the judges as in the case of these Acts which, though from time to time amended and re-amended and amended again, were yet by judicial methods of interpretation shorn of their strength and rendered more or less ineffective. See judgment of Armour J. in *Clarke vs. Creighton*, 45 U. C. R. 518. In this sort of a struggle the legislature is sure to win in the end, and it is hoped that this happy end has now been attained in this Province. Happily the legislation upon the subject in this Province is, to a large extent, since the Provincial Act of 1884, founded upon the existing English Married Women's Property Acts, and this gives the advantage of having the decisions of the English Courts as guides to the interpretation of the provincial legislation. But see *Moore vs. Jackson*, 22 C. C. R. at pp. 226-232.

The legislation upon the subject in this Province is now contained in the Revised Statutes of Ontario, chapter 149.

One of the chief difficulties connected with the Statute is one upon which the English authorities can afford us but little assistance, namely, the question of the varying rights and obligations of husband and wife touching her real personal property, such variations depending upon the date of the marriage, the late of the acquisition of the property, and the fluctuation of the statutory provisions relating thereto.

It is, however, necessary for us to have some knowledge of these

fluctuations to enable us to determine what are the now existing rights and obligations of some specified married woman with reference to some specified property, when she has, by reason of the date of her marriage, or by reason of the date or manner of acquiring the property, fallen under the operation of some one or more of the former statutes, which, together with the various amendments thereof, have now been consolidated into chapter 149 of the R. S. O.

The common law doctrine, modified by the doctrines of equity as aforesaid, continued in operation until the 4th day of May, 1859, when the first Married Women's Property Act came into operation. This statute gave a certain measure of protection to a woman who, *without any marriage contract or settlement*, was married on or before the said 4th day of May; if she was married after the said 4th day of May, without any marriage contract or settlement, the statute provided that as to her property both real and personal, and whether acquired before or after marriage, she should have, hold and enjoy the same free from the debts and obligations of her husband and free from his control or disposition without her consent, but the said provisions were not to extend to any property received by her from her husband during coverture.

These provisions are now consolidated in the R. S. O. 1897, cap. 163, sec. 5 (1), (2) and (4).

This Statute of 1859 created a new sort of estate known as statutory separate estate, but did not settle a wife's property upon her as separate estate, in the sense in which that term is used in a Court of Equity, nor did it in any way affect the husband's rights in her real estate as tenant by the curtesy; it merely protected her in her enjoyment of the property, but did not, as to her real estate, give her the power to convey the same unless her husband joined with her in the conveyance as a granting party.

Moore vs. Jackson, 22 S. C. R. at pp. 213-214 and at pp. 219-220 and at pp. 238-239.

Emrick vs. Sullivan, 25 U. C. R. 105.

As to her right to dispose of her personal property, see *Chamberlain vs. McDonald*, 14 Gr. 447;

Wright vs. Garden, 28 U. C. R. at p. 624, and

Lawson vs. Laidlaw, 3 App. R. at p. 90.

This state of the law continued until the 2nd of March, 1872, when the "Married Women's Property Act, 1872," took effect, whereby it was enacted that after the passing of that Act the real estate of any married woman which was owned by her at the time of her marriage, or acquired by her in any manner during her coverture, should, without prejudice and subject to the trusts of any settlement affecting the same, be held and enjoyed by her *for her separate use*, free from any estate or claim of her husband during her lifetime or as tenant by the curtesy.

This was the first Act which expressly effected a statutory settlement upon a married woman for her *separate use*.

Chief Justice Strong is of opinion that the equitable doctrines as to separate use do not give us a safe guide for determining the rights and obligations of married women with respect to their statutory separate estate, but that they would rather tend to produce embarrassment, inasmuch as they present false and misleading analogies.

Moore vs. Jackson, 22 S. C. R. at page 217.

This Act was held to apply to all cases in which the wife acquired lands after the passing of the Act, even though the marriage took place before the passing of the Act.

Adams vs. Loomis, 22 Gr. 99; affirmed on rehearing, 24 Gr. 242.

This induced the Legislature to intervene when a revision of the Ontario Statutes was contemplated in 1877, and accordingly by 40 Vic., cap. 7, Schedule A (156) it was provided that when the proposed revision should come into effect the said clause in the Statute of 1872 should be modified so as to make it apply to those cases only in which the woman was married after the 2nd day of March, 1872; and should be further modified by adding the provision that nothing contained in the Act of 1872 should prejudice the right of the husband as tenant by the curtesy in any real estate of the wife, which she did not dispose of *inter vivos* or by will.

The Revised Statutes of Ontario, 1877, came into force on the 31st day of December of that year, and contained in chapter 125, section 4, the said provision of the Act of 1872, modified as aforesaid (now contained in R. S. O., 1897, cap. 163, sec. 5 [3]).

It was subsequently decided that the said provision, saving the rights of the husband as tenant by the curtesy in all cases where his wife did not cut out those rights by disposing of her real estate, either during her lifetime or by her will, was merely a statutory declaration of what had always been the meaning and effect of the Statute of 1872.

Furness vs. Mitchell, 3 App. R. 510.

The effect, therefore, of the Statute of 1872 was to permit a married woman, coming under the operation thereof, to deprive her husband of any interest in her lands as tenant by the curtesy, and she might do this by disposing of the lands either in her lifetime or by her will, but if she did not so deprive him of such rights, he then retained his interest as tenant by the curtesy.

The other modification of the Statute of 1872, whereby the operation of that Statute was confined to cases in which the marriage took place after the 2nd day of March, 1872, was one of considerable importance, for, between the said 2nd of March and the 31st day of December, 1877, when the said amendment took effect, vested rights were doubtless acquired in properties which, during that period, were settled to the separate use of married women, but which, after the latter date, would no longer have been subject to her disposal, owing to the marriage in question having taken place before the 2nd day of March, 1872; and such vested interests would not be disturbed by the amending Act of 1877.

The Married Women's Property Act, 1884 (7 Vic., cap. 19), which came into force on the 1st day of July, 1884, provided (sec. 5 and 1 [1]), that every woman married before the commencement of that Act should be entitled to have and to hold, and to dispose of by will or otherwise as her separate property, in the same manner as if she were a *feme sole*, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, should accrue after the commencement of the said Act (which provision is now substantially contained in R. S. O. 1897, cap. 163, sec. 7).

The same Act of 1884 provided (sec. 3 and 2 [1]), that every woman married after the commencement of that Act should be entitled to have and to hold, and to dispose of by will or otherwise as her separate property, in the same manner as if she were a *feme sole*, all real and personal property which should belong to her at the time of her marriage, or should be acquired by or devolve upon her after marriage (which provision is now substantially contained in R. S. O. 1897, cap. 163, sec. 6 [2]).

Agency of wife for husband or husband for wife.—Where a husband as agent or his wife purchased goods, the vendors being ignorant that she was the purchaser, the vendors were held to be entitled to judgment at their option either against the husband or the wife, but they were bound to elect and could not have judgment against both the husband and the wife.

Davidson vs. McClelland, 32 O. R. 382.

The facts that a husband and his wife, each having property, have been living together, and that necessaries have been supplied for the household on the orders of the wife, afford not evidence of a joint liability on the part of the husband and wife to pay for the necessaries so supplied. The presumption *prima facie* arises in such a case of an actual authority impliedly given to the wife by the husband to pledge his credit for necessaries for the household, but that presumption may be rebutted by proof of an arrangement under which a substantial allowance has been made by the husband to the wife for household expenses on the understanding that she was not to pledge his credit.

Morel Bros. vs. Westmoreland, 1903, 1 K. B. 64, and see 19 L. Q. Rev. 122; affirmed 1904 A. C. 11.

Signing judgment against the wife in such a case is a conclusive election by the plaintiffs to rely on her liability, and they can not afterwards insist on the liability of the husband. But see *French vs. Howie*, S. C. 1905, 2 K. B. 580.

Where a wife is living with her husband, and in the ordinary arrangement of their household she gives orders which are proper and not extravagant, it is presumed that she has the authority of her husband for so doing. When the husband and wife do not live together, and the husband has turned the wife out of doors, the law makes her his agent to order such things as are reasonable and necessary for herself; but if she is living in open adultery, her husband is not bound by any contract she may make even for necessaries.

If the husband has not turned his wife out of doors, and they have separated in consequence of differences, the question will be whether the husband has given the wife sufficient for necessaries, suitable to his degree, for if he has, he is not liable for her debts even for necessaries.

Emmett vs. Norton, 56 R. R. 848; 8 Car. and P. 506.

Where the wife had authority in fact from her husband to order goods for her own use it was held by the Court of Appeal that an action against her for the price of the goods must fail, because there was no evidence that she had contracted "otherwise than as agent." This was affirmed by the House of Lords upon an equal division of the Law Lords, and it was held that it was immaterial whether the vendors did or did not know that she was a married woman.

Paquin Limited vs. Beauchlerk, 1906 A. C. 148.

Anti-Nuptial Debts.—After marriage, to the extent of her separate property, a wife is liable for all debts contracted and all contracts entered into or wrongs committed before her marriage, and she may be sued therefor. Her husband is not held liable for them, unless by contract between the consorts he has accepted liability.

The husband may, however, be liable to the extent of all property which he has acquired or becomes entitled to from or through his wife, after deducting payments made in deduction thereof and sums for which judgment may have been *bona fide* recovered against him in connection therewith.

Husband and wife may be jointly sued in respect of such debts and liabilities if the plaintiff seeks to establish his claim, either wholly or in part, against both of them.

Bank Deposits, etc.—All deposits, stocks, bonds, debentures and other securities, standing in the sole name of a married woman on the 1st day of July, 1884, shall be deemed, unless and until the contrary be shown, to be her separate property. She is, therefore, entitled to them for her separate use, and to receive or transfer them; to receive the dividends, interests and profits thereof, without the concurrence of her husband, and to indemnify all public officers, and all directors, managers and trustees of corporations, public bodies or societies, in respect thereof.

When the above named deposits or securities have been placed in her sole name after July 1, 1884, they shall likewise be held to be *prima facie* her own, in respect of which, so far as any liability may be incident thereto, her separate estate alone shall be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded or not.

The husband need not join in the transfer of any of these particulars.

Contracts.—A married woman may enter into any contract, and to the extent of her separate property render herself liable in connection with her contracts.

In all matters relating to her contracts she may sue or be sued, in contract, tort, or otherwise.

She proceeds as if a *feme sole*, and her husband need not be joined with her as Plaintiff or Defendant in any action.

Contracts entered into by her prior to April 13, 1897, shall be deemed to be entered into by her with respect to, and to bind her separate property, unless the contrary be shown. Such contracts bind both the separate property of which she was possessed or to which she was entitled at the date of the contract and that which she may thereafter acquire.

Contracts entered into by her, otherwise than as agent, after July 13, 1897, bind all separate property which at the date of the contract she, in fact or not, possesses or is entitled to, without the necessity of proving that she had any separate property at the date of the contract or thereafter; all separate property which she may at the time or thereafter possess or be entitled to; and shall be enforceable by law against all property which she may thereafter while discovernt possess or be entitled to.

Property is exempt which she is restrained from possessing

Conveyances.—See R. S. O., cap. 165.

Every married woman of the full age of twenty-one years may convey real estate and release or extinguish powers and appoint an attorney, as if a *feme sole*.

She may also by deed bar her dower, and any right or inchoate right of dower in any real estate.

Conveyances—Necessity for Husband to join in.—Many difficult questions have arisen from time to time as to whether, under the circumstances of a given case, considering the date of the marriage and the date of the acquisition of the property in question, a married woman could make a valid conveyance of her property without her husband joining with her in the conveyance.

In all cases falling under the Statute of 1859, it was perfectly clear that the husband must join in the conveyance as a granting party, in order to make a good title, and that for two reasons:— firstly, because it was necessary in order to dispose of his rights as tenant by the curtesy, and, secondly, because without his concurrence the wife's conveyance was absolutely void, and would not even pass her interest in the property.

As soon, however, as the Statute of 1872 came into operation, questions arose, and from that time onward continued to arise, as to the effect of a conveyance of real estate by a wife without the concurrence of her husband, and these questions gave rise to hopelessly conflicting opinions, which have never yet been satisfactorily clarified by coercive judicial determination.

A few of these difficulties are dealt with in an Article in 7 Canadian Law Times, 166.

Fortunately, the Provincial Legislature has passed certain enactments (hereinafter mentioned), which serve to quiet the titles which, but for these enactments, might have been disturbed by the questions referred to.

It may probably be taken as satisfactorily settled (apart from the enactments referred to) that any conveyance of real estate made by a married woman since the 1st day of July, 1884, is *sufficient to pass her interest in the property*, even though her husband did not concur therein.

That result comes about in this way:—R. S. O. 1887, cap. 127, sec. 3, provided that every married woman, being of the full age of twenty-one years, may, by deed, convey her real estate, or any interest therein, either personally or by attorney, as if she were a *feme sole*, but that no such conveyance shall be valid unless the husband is a party to and executes the deed by which the same is effected. The Married Women's Property Act, 1884 (sec. 22), repealed that portion of the lastly mentioned section which required the husband to be a party to and execute the deed, and did so in such a way as to indicate that the repeal related back to the 1st day of July, 1884, without saving any rights which might have been acquired to attack conveyances which had been made in the meantime. (The Statute as affected by such repeal is now contained in R. S. O. 1897, cap. 165, sec. 3). The result is that the concurrence of the husband is not necessary in order to make valid a conveyance of real estate made by a married woman since the 1st day of July, 1884, and by such a conveyance she may pass all or any part of *her interest* therein, but she cannot affect her husband's rights therein, whether as tenant by the curtesy or otherwise, when such rights exist.

This question was dealt with by Mr. Justice Gwynne in a case in which the woman was married in 1869, and some of the property was acquired in 1879, and some of it in 1882. He says, "I have 'already expressed my opinion that section 1 of 47 Vic., chap. 19, 'enabled every married woman to dispose of her real property by 'will or otherwise; but apart altogether from this clause, and resting solely upon the repeal of the exception in section 3 of chap. '127 R. S. O., 1877, it is clear that every married woman can dispose 'of absolutely (by deed executed by herself alone) the whole estate 'which is vested in her. So long as she lives, therefore, it cannot 'be doubted that she has an absolute *jus disponendi* of all real property which the law enables her to hold and enjoy free from the 'control and disposition, and from the debts and obligations of her 'husband."

Moore vs. Jackson, 22 S. C. R. at page 235, and see page 234, and see *per Patterson, J.*, at p. 240.

The amendment to The Married Woman's Real Estate Act contained in 1 Vic., cap. 21, sec. 2 (now contained in R. S. O. 1897, cap. 165, sec. 9), might have been supposed to give a legislative sanction to a construction of the Married Women's Property Acts contrary to that above suggested, had it not been for the provision of the 3rd section thereof (now contained in R. S. O. 1897, cap. 165, sec. 9 [2]), that nothing contained in that Act shall be taken to imply that a married woman may not, as of right, make any conveyance of her real estate as if she were a *feme sole*.

Previous to the passing of the Married Woman's Real Estate Act, 1873 (which came into effect on the 20th of March of that year), it was not only necessary that a husband should be a party to, and should execute a conveyance of real estate other than equitable separate estate made by his wife, but it was also necessary that she should be examined apart from her husband, before a proper officer, as to her voluntary consent to the conveyance, and there had to be endorsed upon the conveyance a certificate by such officer as to such examination and such consent.

The first of the quieting title enactments above referred to was the said Married Woman's Real Estate Act, 1873, section 12 of which (now contained in R. S. O. 1897, cap. 165, sec. 6) was aimed at *curing the defects in conveyances executed before the 29th day of March, 1873, by married women when there had been no certificate or an irregular certificate, or an irregular execution by the married woman.*

The result thereof was to make valid certain conveyances which would otherwise have been void, subject, however, to the provision of section 13 of the Act now contained in R. S. O. 1897, cap. 165, sec. 6 [2], that the Act shall not render valid (a), any conveyance not executed in good faith; (b), any void conveyance to the prejudice of any title, acquired from the married woman by a deed duly executed and certified, subsequently to the execution of the void conveyance, and before the passing of the Act, unless the actual possession or enjoyment of the real estate in question was, subsequently to the making the void conveyance, and continuously for three years before the passing of the Act, in the grantee under the void conveyance, or those claiming by, from or under him, and unless he or they were in such possession at the time of the passing of the Act; (c), any conveyance of land of which the married woman or those claiming under her, were, at the time of the passing of the Act, in the actual possession or enjoyment contrary to the terms of such conveyance.

The phrase "Actual possession or enjoyment contrary to the terms of such conveyance" was much discussed in *Elliott vs. Brown*, 2 O. R. 352; 11 App. R. 228.

Section 14 of the said Married Woman's Real Estate Act, 1873, repealed all the former statutory provisions requiring an examination apart and certificate as aforesaid.

The next of the said quieting title enactments was 50 Vic. (1887), cap. 7, s. 23 of which (now contained in R. S. O. 1897, cap. 165, sec. 8) was aimed at *curing defects in conveyances executed on or after the 29th day of March, 1873, by a married woman affecting her real estate when the same are signed or executed by her husband, but he has not been made a party or has not been made a granting party thereto.*

This Statute also contains a saving clause that it shall not

render valid any conveyance to the prejudice of any title lawfully acquired from any married woman prior to the passing of the Act, nor render valid any conveyance from the married woman not executed in good faith, or any conveyance of any land, of which the married woman or those claiming under her was or were at the time of the passing of the said Act in actual possession or enjoyment contrary to the terms of such invalid conveyance.

The next of the said quieting title enactments was 59 Vict. (1896), cap. 41, s. 1 of which (now contained in R. S. O. 1897, cap. 165, sec. 7) was aimed at curing defects in conveyances made before the 29th day of March, 1873, by a married woman affecting her real estate notwithstanding that her husband did not join therein.

This Statute also contains a saving clause (like that in The Married Woman's Real Estate Act, 1873), that it shall not validate conveyances made *mala fide*; or conveyances made to the prejudice of subsequent valid conveyances unless those claiming under the invalid conveyance have been in possession; or conveyances when the married woman, or those claiming under her, are in possession contrary to the terms of such conveyance.

These quieting title enactments set at rest most of the difficult questions which have arisen with regard to the necessity for the husband to join in his wife's conveyance of real estate, for the purpose of making such conveyance a valid disposition of *her interest* in that estate. In order, however, to make this beneficial legislation complete, it was needed that there should be a further enactment of a similar nature, making valid all conveyances executed by a married woman on or after the 29th of March, 1873, and before the 1st day of July, 1884, of or affecting her real estate, notwithstanding that her husband did not sign or execute the same.

Accordingly, by 63 Vic., cap. 17, sec. 21, the lastly mentioned quieting title enactment was repealed, and a new provision enacted, aimed at curing defects in conveyances made before the 1st day of July, 1884, by a married woman, affecting her real estate, notwithstanding that her husband did not join therein.

This Statute also contains a saving clause similar to that above referred to.

It has already been pointed out that a conveyance made since the 1st day of July, 1884, by a married woman affecting her real estate is *sufficient to pass her interest in the property* notwithstanding that her husband did not join therein. In any case, however, in which he is entitled to an interest in the property, either as tenant by the curtesy or otherwise, it is still necessary (as it always has been) that the husband should join in the conveyance, as a granting party, for the purpose of extinguishing his interest.

It therefore appears that one of the chief questions to be considered by the conveyancer is, when will it be necessary to see that the husband joined in a conveyance of land, made by a married woman, for the purpose of extinguishing his rights as tenant by the curtesy, whether initiate or consummate?

The Land Titles Act, 1 Geo. V., Ch. 28, s. 103, provides that, "a married woman shall for the purposes of this Act be deemed a *feme sole* and may execute without seal any bar or dower or other instrument required under this Act. R. S. O. 1897, c. 138, s. 108."

By 1 Geo. V., Ch. 17, s. 36, section 3 of the Married Women's Property Act is amended by adding the following clause:—

"(5) Where any freehold hereditament is vested in a married woman as a bare trustee, she may convey or surrender the same

as if she were a *feme sole*, and without her husband joining in the conveyance."

Debt.—R. S. O., cap. 80.

No married woman shall be arrested for debt.

Disputes as to Property.—Disputes between consorts as to the title or possession of property, may, upon petition of either or of interested parties, be summarily decided by the proper court.

Dower.—See R. S. O., cap. 164.

The wife is entitled to dower as may be provided by the common law, by special act, or by covenant between the consorts.

In general, her right of dower exists over all lands (with certain exceptions) of which the husband at the time of his marriage or thereafter was seized, in which during his life his wife has not barred her dower.

On the other hand, a husband can be tenant by the curtesy of such of his wife's lands as she died seized of.

Dower is not recoverable out of lands which when aliened were in a state of nature.

And see notes under "Conveyances."

Earnings.—See "Property."

Executrix or Administratrix.—A married woman may alone or jointly with another act in these capacities, she may in the exercise of her trust sue or be sued, and may, without her husband and as if a *feme sole*, transfer or join in transferring any such particulars as are mentioned in the section above entitled "Bank Deposits," or in section 10 of R. S. O., cap. 163.

One curious result of the legislation touching married women's property is that, although she may, without the concurrence of her husband, convey her own property, yet, if she holds land as a trustee, with duties to perform, she cannot convey it unless her husband joins in the conveyance.

Re Harkness & Allsop's Contract, 1896, 2 Ch. 358; and see 18 Can. L. T. 134; and *Re Brooke & Fremlin's Contract*, 1898, 1 Ch. 647.

Where, however, any freehold hereditament is vested in a married woman as a *bare trustee* she may convey or surrender the same without her husband joining in the conveyance.

R. S. O., cap. 129, sec. 8.

If a married woman holds a mortgage upon lands as a trustee, she is a bare trustee of the lands after the mortgage money has been paid, and she is therefore able to reconvey the lands without the necessity for her husband to join in the reconveyance.

Re Howgate & Osborn's contract, 1902, 1 Ch. 451.

Investments.—Investments made by the wife fraudulently with moneys of her husband without his consent, may by the court be transferred and paid to him.

Intestacy.—If the wife dies intestate, her property, real and personal, separate or otherwise, is divided—one-third to her husband, if she leave issue, and one-half if no issue, and subject thereto shall go and devolve as if her husband had pre-deceased her.

Where the husband dies since July 1, 1895, intestate and leaving a widow but no issue, his estate shall, if the net value of his real and personal property does not exceed \$1,000, belong to his widow absolutely and exclusively.

Where the net value of the real and personal estate exceeds \$1,000, the widow shall after payment of debts, funeral and testamentary expenses and expenses of administration be entitled to \$1,000, part thereof absolutely and exclusively, and shall have a charge upon the whole of the estate, after payment as above stated, for her \$1,000 with interest from her husband's death at 4 per cent. per annum until payment.

The provision for the widow mentioned in the two foregoing paragraphs shall be in addition and without prejudice to her interest and share in the residue of the real and personal estate of the intestate remaining after payment of the sum of \$1,000 and interest as aforesaid, in the same way as if such residue had been the whole of the intestate's real and personal estate, and the rules of the two preceding paragraphs had not been enacted.

Maintenance of Deserted Wives.—In addition to the right which a wife has to bring an action against her husband for alimony, a deserted wife is now provided with a summary statutory remedy, which may be granted by any Stipendiary or Police Magistrate, or any two of His Majesty's Justices of the Peace, who are authorized to allow the wife such weekly sum, not exceeding \$10.00 as the Magistrate or Justices may consider to be in accordance with the husband's means, and with any means the wife may have for her support and the support of her family.

R. S. O. 1897, cap. 167. Amended by 1 Geo. V., Ch. 34.

The Act provides that a woman shall be deemed to have been deserted within the meaning of the Act, when she is living apart from her husband because of repeated assaults or other acts of cruelty or because of his refusal or neglect, without sufficient cause, to supply her with food and other necessities of life when able to do so, no order shall be made in favour of a wife who is proved to have committed adultery, unless condoned; and an order may be rescinded upon proof of subsequent adultery.

Marriage Settlement.—By the provisions of Section 21, of R. S. O. 1897, cap. 163, nothing in the Act contained shall interfere with or affect any settlement or agreement for a settlement of the property of a married woman whether ante-nuptial or post-nuptial, but no such settlement or agreement shall have any greater force or validity against the creditors of such woman than a like settlement or agreement made or entered into by a man would have against his creditors, save only that she may be restrained from anticipation in certain cases.

Therefore when an ante-nuptial settlement was made between an intended husband and an intended wife, who was an infant, which provided for the settlement of her property, it was held that the settlement was binding upon the wife after marriage, notwithstanding her infancy, for apart from the operation of the Married Women's Property Act, the property in question would at law have vested in the husband by virtue of his marital right, and the settlement in question was in equity binding upon the husband.

Buckland vs. Buckland, 1900, 2 Ch. 534.

Earle vs. Kingscote, affirmed, 1900, 2 Ch. 585.

Of Infants.—1 Geo. V., Ch. 35, s. 15 *et seq.*

Infants may with the approbation of the High Court make valid settlements upon marriage.

Orders of Protection.—For his profligacy, insanity, cruelty, and for other causes, a wife may be separated from her husband

and may be granted alimony. In such case she is entitled to an order securing to her the earnings of her minor children free from her husband's debts and control.

Personal Rights and Obligations of Married Women.—

Before the Married Women's Property Act, 1872, a married woman bringing an action at law had to join as a co-plaintiff along with her husband, and if she brought suit in a Court of Equity, she had to sue through the medium of a next friend. If, on the other hand, she was made a defendant in respect of her separate estate, it was necessary that her husband, and usually that the trustee of her separate estate, should be made a co-defendant with her.

The Act of 1872 extended her right to sue, and her obligation to be sued, but it was held that her obligations, arising out of contract, could be forced against only so much of the separate estate to which she was entitled, free from any restraint on anticipation, at the time when the contract was entered into, as remained at the time when judgment was given, and not against separate estate to which she became entitled after the making of the contract.

Pike vs. Fitzgibbon, 17 Chy. D. 454.

See history of the Provincial adjudications under this Act in dissenting judgment of Armour J., in *Clarke vs. Creighton*, 45 U. C. R. 514.

The married woman's contractual obligations were extended by the Act of 1884, but even under this Act it was necessary for the creditor to prove, in an action against a married woman upon her contract, that she had at the time of entering into the contract (and perhaps at the date of the judgment) some separate property, free from any restraint upon anticipation, and with reference to which she may reasonably be deemed to have contracted.

See per Osler, J., in *McMichael vs. Wilkie*, 13 App. R. at pages 469-470; but see per Chief Justice Strong in *Moore vs. Jackson*, 22 S. C. R. at pp. 220-223. See also Article in 8 L. Q. Rev. 62, and *Downe vs. Fletcher*, 21 Q. B. D. 11.

If the creditor succeeded in proving this he was then entitled to a judgment under which he could levy, not only upon the separate property which she had at the time of entering into the contract, but also upon any separate property thereafter acquired by her.

Stogdon vs. Lee, 1891, 1 Q. B. 661; and see Article in 13 L. Q. Rev. 406.

The form of judgment against a married woman, as settled in England, and followed in this Province, is as follows:—

"It is adjudged that the plaintiff do recover £ and costs (to be taxed) against the defendant (the married woman), such sum and costs to be payable out of her separate property, as hereinafter mentioned, and not otherwise. And it is ordered that execution hereon be limited to the separate property of the defendant (the married woman) not subject to any restriction against anticipation, unless by reason of sec. 19 of the Married Woman's Property Act, 1882, the property shall be liable to execution, notwithstanding such restriction." (The corresponding section of the Provincial Act, R. S. O., 1897, cap. 163, is section 21.).

Scott vs. Morley, 20 Q. B. D. 20, and at page 132.

This, however, does not apply to a case falling under the operation of the Married Woman's Property Act which became effective on the 13th day of April, 1897. As to the latter class of cases the following form of judgment is used:—

"It is adjudged that the plaintiff do recover against the Defendant the sum of £ and costs to be taxed, such sum and costs to be payable out of her property hereinafter mentioned and not otherwise; and it is ordered that execution herein be limited to the separate property of the said defendant, not subject to any restriction against anticipation, unless such property shall be liable to execution, notwithstanding such restriction; and to such property as she may hereafter while discoverd, possess or become entitled to and not theretofore subject to any restriction against anticipation as aforesaid."

See 10 O. L. R. at p. 418.

The judgment granted to enforce a claim against a married woman is one directed wholly against her property and not against her person; therefore it seems that even where she is ordered to pay money into Court as a defaulting trustee there can be no remedy against her by way of attachment.

Re Turnbull, 1900, 1 Ch. 180.

If the action was against a married woman to recover a debt contracted by her before coverture, it was not necessary for the plaintiff to prove the existence of separate estate in order to recover judgment, which, however, would be limited in its operation in accordance with the form settled in *Scott vs. Morley*.

Downe vs. Fletcher, 21 Q. B. D. 11.

A judgment against a married woman in respect of a debt contracted by her before marriage cannot be enforced by way of equitable execution against her separate property subject to a restraint against anticipation, where the restriction is not contained in a settlement or agreement for a settlement of her own property made or entered into by herself.

Birmingham vs. Lane, 1904, 1 K. B. 35.

It was also held that, if a judgment were recovered against a married woman, and her husband then died, the fact of his death and her discoverdure would not render her personally liable to pay the judgment debt, and that the creditor's rights in such a case were still to be limited by the form adopted in *Scott vs. Morley*.

Re Hewett, 1895, 1 Q. B. 328.

Hammond vs. Keachie, 28 O. R. 455.

On the other hand, if she enters into a contract while unmarried, and thereby becomes personally liable, her subsequent marriage before action thereon would not, in England, prevent the creditor from recovering a personal judgment against her, without any of the restrictions imposed by the form of judgment in *Scott vs. Morley*.

Robinson vs. Lynes, 1894, 2 Q. B. 577, but see Provincial Statute

R. S. O. 1897, cap. 163, sec. 16.

In 1897, an Act was passed (now contained in R. S. O. 1897, cap. 163, sec. 4) still further extending the contractual obligations of a married woman. This Act provides that,—

(1) Every contract entered into by a married woman on or after the 13th day of April, 1897, otherwise than as an agent:

(a) Shall be deemed to be a contract entered into with respect to, and to bind her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract, and it shall not be necessary in any proceeding to prove that she had any separate property at the time when such contract was entered into, or subsequently;

- (b) Shall bind all separate property which she may at the time or thereafter possess, or be entitled to; and
- (c) Shall also be enforceable by process of law against all property which she may thereafter, while discover, possess or be entitled to.

(2) Nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract, any separate property which she is restrained from anticipating.

One might have reasonably supposed that the intent of the Legislature is made so plain by these provisions that no doubt about that intent could arise in the mind of any person, other than one who is so saturated with tradition as to make him prefer quibbles and paradoxes to plain common sense, when dealing with this class of legislation. The Court of Appeal in England, however, has started anew its old-time struggle with Parliament touching the Married Women's Property Acts, and in construing the English Act, from which the above provisions were adapted, has held that the effect of the last clause is to protect from creditors any property which at the time of her incurring the liability in question was settled upon a married woman to her separate use without power of anticipation, even though at the time when the creditor attempts to realize upon the property in question she has become discover; and this notwithstanding the fact that the Statute only purports to protect *separate estate which she is restrained from anticipating*, and that there can be no restraint upon anticipation except in connection with separate estate, and that there can be no separate estate of a woman who is discover.

Barnett vs. Howard, 1900, 2 Q. B. 784; followed by *Brown vs. Dimbleby*, 1904, K. B. 28.

Our Courts in this Province will doubtless be able to avoid the evil effect of this decision by distinguishing between the Provincial Act and the English Act upon the ground that between the words "property which" and the words "she is restrained," as contained in the Provincial Act, the English Act contains the words "at that time or thereafter."

The separate estate of a married woman is liable for her funeral expenses.

Re Gibbons, 31 O. R. 252.

Personal Rights of Husband and Wife inter se.—"Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, *including her husband*, the same remedies for the *protection and security of her own separate property* as if such property belonged to her, as a *feme sole*, but *except as aforesaid, no husband or wife shall be entitled to sue the other for a tort.*"

R. S. O., cap. 163, sec. 15.

A wife may maintain an action for trespass against a third person who entered her house against her will, although he entered it with the authority of her husband; but the Court of Appeal in England treated it as an open question whether she could have maintained a similar action against her husband.

Weldon vs. De Bathe, 14 Q. B. D. 339.

The Court of Appeal in England confirmed an interim injunction, granted in an action brought by a wife against her husband, restraining him from entering her house, where he was claiming to enter. "Not for the purpose of associating or living with his wife as a husband, but for the purpose of using the house as a house

for himself," and where he was claiming to be "allowed the proprietary use of the house." Lord Justice Cotton, however, said, "It must not be supposed by my concurring in what is the view of the other members of the court—that the injunction should not be disturbed—that I look with the slightest favour on the contention of the plaintiff's Counsel that there is a right in the case of a married woman being entitled to and living in a house settled to her separate use, to come to a court of Equity to restrain her husband at her will and pleasure from entering there."

Symonds vs. Hallett, 24 Chy. (1), 346.

It has been held in a New Brunswick case that a wife is entitled to an injunction restraining her husband from interfering with her use and occupation of her land where she is living apart from him, not wilfully or of her own accord.

Johnston vs. Johnston, 1 N. B. Eq. 167.

Where the plaintiff, a married woman, carried on business as a hotel keeper and owned the chattels in the hotel, and the defendant, her husband, interfered with her in her business by taking the receipts thereof and giving orders to servants and maltreating the plaintiff, she was held entitled to an injunction restraining the defendant from interfering in the business or with the servants or agents and from removing any of the plaintiff's chattels; and it seemed that if she had asked for it she would have been granted an injunction excluding the defendant from the hotel.

Donnelly vs. Donnelly, 9 O. R., 673.

The court may restrain a husband from interfering with his wife's separate estate, and from continuing in possession of a house forming a portion of such estate, even though it be the house in which she resides.

Green vs. Green, 1 R. R. 151.

It was formerly said that "The husband hath by law power and dominion over his wife, and may keep her by force, within the bounds of duty, and *may beat her*, but not in a violent or cruel manner.

Bacon's Abr. tit. Baron & Feme (B), cited with apparent approval by Coleridge, J., in *Re Cochrane*, 8 Dowl. 633.

The courts now, however, say that when the old law writers referred to the right of a husband to administer "*Castigation*," they meant admonition and not personal chastisement.

Queen vs. Jackson, 1891, 1 Q. B. 671.

At the common law a man and his wife were deemed to be one person, and he was that person.

One of the results of that doctrine was that if an estate in fee were granted to a man and his wife, they were neither joint tenants nor tenants in common, but they were said to be tenants by Entireties, so that neither the husband nor the wife could dispose of any part of the estate or any interest therein without the concurrence of the other, but the whole estate must remain to the survivor.

This state of Tenancy by Entireties has now been abolished by operation of the Married Women's Property Acts.

Re Wilson, 20 O. R. 397.

Another result of the said common law doctrine was that if an estate were granted to a husband and wife and to two other men, the husband and wife took but a one-third share between them, and each of the other men took a one-third share.

It is doubtful whether this does not still remain law, notwithstanding the Married Women's Property Act.

See *Re Jupp*, 39 Chy. D. 148, holding it still to be the law; See *Contra Re Dixon*, 42 Chy. D. 306.

Another absurdity growing out of the common law doctrine of merger of identity still exists as living law, namely, that in an action for libel the fact that the defendant has disclosed the libel to his wife is not evidence of publication.

Wennhak vs. Morgan, 20 Q. B. D. 635.

It has been held, however, that disclosing to a man's wife, a defamatory libel against him is an actionable publication thereof.

Wenman vs. Ash, 93 R. R. 761.

The husband was at common law liable for his wife's ante-nuptial debts and torts, and for her post-nuptial torts by reason of the merging of her personality in his, but he was not liable for her post-nuptial debts, as, for the same reason, she could not contract any, save only as his agent, in which case it was his debt and not hers.

The rights and obligations of husband and wife with reference to her ante-nuptial contracts and torts and her post-nuptial torts, are now regulated by R. S. O. cap. 163, sections 16, 17 and 18.

Property Rights as Between Husband and Wife "inter se."—Section 3 (1) of the M. W. P. Act provides that, "A married woman shall be capable of acquiring, holding and disposing by will or otherwise, of any real or personal property as her separate estate, in the same manner as if she were a *feme sole*, without the intervention of any trustee."

Section 5 (4) of the same Act provides that a married woman falling under the operation thereof, may hold and enjoy her personal property, whether belonging to her before marriage or acquired after marriage, free from the debts of the husband and free from his control, but that "This sub-section shall not extend to any property received by a married woman from her husband during coverture."

The latter subsection must be read along with the prior subsection, and the result thereof is to "Place the wife precisely in the position of a *feme sole* with regard to property transferred to her by her husband during coverture; and that, therefore, she can hold the property against his creditors unless the transfer is made for the purpose of defeating them."

Shuttleworth vs. McGillivray, 5 O. L. R. 536.

An actual present gift, and delivery of chattels by a husband to his wife will be effective, and the subsequent possession thereof will be her possession, although they are retained in a house occupied by her husband and herself.

If married after July 1, 1884, she also holds as her separate property, all real and personal property belonging to her at marriage or acquired since then. This rule holds also with respect to property acquired after the above date by a woman married prior thereto.

With respect to women married before July 1, 1884, the Act should be carefully consulted.

R. S. O. 1897, cap. 163, sec. 6 (1), enacts that,—“every married woman whether married before or after the passing of this Act, shall be entitled to have and hold as her separate property, and to dispose of as her separate property, the wages, earnings, money

"and property, gained or acquired by her in any employment, trade or occupation, in which she is engaged, or which she carries on, *"and in which her husband has no proprietary interest, or gained or acquired by the exercise of any literary, artistic, or scientific skill."*

By I. Geo. V., Ch. 25, s. 36, "Any property may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person, and may in like manner be conveyed or assigned by a husband to his wife, or by a wife to her husband alone or jointly with another person, R. S. O. 1897, c. 119, s. 37.

As to the significance of the words "in which her husband has no proprietary interest," see

Cooney vs. Sheppard, 23 App. R. 4.

Young vs. Ward, 24 App. R. 147.

Protection.—See "Personal Rights and Obligations of Married Women."

Restraints Upon Anticipation.—See also "Marriage Settlements."

Though a married woman is restrained from anticipation, the court may in its discretion, where it appears to be to her benefit, by order or judgment, with her consent, bind her interest in any property.

One of the inventions of the Court of Chancery, whereby a married woman is prevented from assigning or charging her future income, either expressly, or by incurring debts, or by suffering judgment to be obtained against her, is the doctrine known as Restraint upon Anticipation.

See a discussion of the doctrine in 21 L. Q. Rev. 233.

If property be settled to the separate use of a married woman, and the words "without power of anticipation," or words of like import, be added, the married woman is unable to give an effective receipt for any income arising from the settled property, which is not already due and payable, nor can she by any device authorize any other person, whether he be her assignee, her creditor, or any other person, to give such a receipt. The consequence is that the person who is responsible to her for the payment of the income arising from the settled estate cannot safely pay it to any person other than the married woman herself or to some person claiming through, or under her, whose claim, whether by assignment, judgment, or otherwise, arises after the falling due of the instalment of income in question.

A modern English writer says:—"The restraint on anticipation 'exists ostensibly to prevent a married woman being 'kissed or 'kicked' out of her property, but the area of its usefulness is not 'limited to this. Skillfully used, it may be made to produce results 'which would have surprised Lord Thurlow. Thus it enables a 'married woman to give unlimited orders for gowns, bonnets and 'jewellery, and then, when sued, to set up her incapacity to contract (*Braunstein vs. Lewis*, 64 L. T. R. 265). It enables her to 'desert her husband without paying damages under the Matrimonial 'Causes Act, 1884 (*Mitchell vs. Mitchell*, 1891, P. [C. A.] 208). If 'her husband gets a divorce from her, she has only to marry again, 'thereby reviving the restraint, and the court cannot decree maintenance to the wronged husband and children. This last was the 'device which the Court of Appeal was invoked to frustrate in '*Midwinter vs. Midwinter* (40 W. R. 33), and it did its best to do 'so by directing an inquiry as to the wife's means so as to be pre-

"pared, on the decree being made absolute, with an order to fore-stall her anti-marital manœuvres. The unique advantage of the "married woman's position is that she can use the restraint to "discomfort her enemies, and when it suits her convenience she "can get the court to remove it. (*Re Milner's Statement*, 1891, 3 Ch. "547)" 8 L. Q. Rev. 12.

After a considerable divergence of opinion it has been settled that where a married woman has separate property subject to a restraint upon anticipation, the restraint applies to income which has become due after judgment, but has not yet been paid to her; and therefore such income cannot be made available in execution, either by way of receiver, appointed by way of equitable execution, or otherwise; but it seems that it would be otherwise as to arrears of income which were due at the time of obtaining judgment, and which remained unpaid when judgment was obtained.

Whiteley vs. Edwards, 1896, 2 Q. B. 48; but see *Bolitho vs. Gidley*, 1905, Act 98; as to which see 41 Can. L. I. 548; and 21 L. Q. Rev. 233, and see article on "The Married Woman Judgment Debtor," 13 L. Q. Rev. 406.

As to the effect of a restraint on anticipation when a married woman contracts an obligation and subsequently becomes discoverd and then judgment is obtained against her on that obligation, see the statute 1897 treated under the next heading.

A restraint on anticipation if imposed by a stranger (*i. e.* if imposed upon property other than her own) is good against all a married woman's ante-nuptial debts and liabilities. *Birmingham vs. Lane*, 1904, 1 K. B. 35.

A plaintiff cannot by postponing the entry of his judgment make income available which accrued due after the time when he became entitled to enter judgment.

Colyer vs. Isaacs, 77 L. T. 198.

Quære as to the effect of bringing an action upon a judgment already obtained against her so as to reach the income becoming free between the dates of the two judgments.

See 13 L. Q. Rev., at pp. 409-10.

Where a married woman, entitled to separate estate with a restraint on anticipation, trades separately from her husband and becomes bankrupt, her separate estate vests in her trustee in bankruptcy, subject, however, to the restraint on anticipation, and on the death of her husband in her lifetime is assets for her creditors.

Re Wheeler's Settlement Trusts, 1899, 2 Ch. 717; but see *Brown vs. Dimbicky*, 1904, 1 K. B. 28.

If a husband has before marriage and with a view to marriage renounced his marital rights, he is not entitled, after the death of his wife intestate, to administration of her estate, for the right to administration follows interest, and he, by his renunciation, has stopped himself from claiming any interest in her estate.

Dorsey vs. Dorsey, 30 O. R. 183.

The restraint upon alienation can be grafted upon separate estate only, but it is sufficient if the graft be made upon a married woman's statutory separate estate, even though it be not equitable separate estate.

Re Lumley, ex-p., Hood Barrs, 1896, 2 Ch. 690.

A gift to separate use will not be implied from the mere existence of an attempted restraint upon anticipation.

Stogdon vs. Lee, 1891, 1 Q. B. 661.

It is provided by R. S. O., 1897, cap. 163, sec. 9, that, "Notwithstanding that a married woman is restrained from anticipation the court may, if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in any property."

For a statement of the principle upon which the court will act in exercising this jurisdiction, see *Paget vs. Paget*, 1898, 1 Ch., at page 55.

The restraint will not be removed for the purpose of enabling her to effect a change of investments from court securities into other of a speculative nature, though they are sanctioned by the settlement and the change would increase her income.

Re Blundell, 1901, 2 Ch. 221.

The Ontario Legislature has also adopted the provisions of Imperial Act 51-52 Vic., cap. 59, sec. 6, that where a trustee has committed a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary is a married woman entitled for her separate use, whether with or without a restraint upon anticipation, make such order as to the court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

R. S. O., cap. 129, sec. 30.

See *Griffiths vs. Hughes*, 1892, 3 Ch. 105.

Re Somerset, 1894, 1 Ch. 231.

Mara vs. Brown, 1895, 1 Ch., 69-94.

Separate Estate, What is.—(1) Leaving out of consideration for the moment the case of women married on or before the 4th day of May, 1859, all interests in property, real or personal, held by a married woman are statutory separate estate, which can be reached by creditors, except:—

(a) Where she was married between the 5th day of May, 1859, and the 2nd day of March, 1872 (both inclusive), and there was a marriage contract or settlement; in which case the property which she had at the time of the marriage, and not included in the settlement, will be subject to the common law rights of her husband, and will not be in any sense her separate estate; but any property acquired by her after marriage, and not included in the settlement, falls within the operation of the Statute, and therefore becomes statutory separate estate.

See *Dawson vs. Moffatt*, 13 O. R. 170.

(b) When she was married between the said dates, and the property in question was received by her from her husband during coverture, and before the 1st day of July, 1884.

(2) Where the woman was married before the 4th day of May, 1859, *without any marriage contract or settlement*, she has the same rights with regard to her real and personal property as a woman married between the 4th day of May, 1859, and the 2nd day of March, 1872, save only that as to any of her said property which her husband reduced into possession on or before the 4th day of May, 1859, he thereby preserved his common law rights therein, and such property is in no sense her separate estate.

Propositions 1 and 2 appear to be the effect of the various Statutes read in the light of *Moore vs. Jackson*, 20 O. R. 652, and 22 S. C. R. 210.

Solemnization of Marriage. See now, 1 Geo. V., Ch. 32.

Tenancy by the Curtesy.—“Tenant by the curtesy of England is where a man marries a woman seized of an estate of inheritance, that is, of lands and tenements in fee simple or fee tail, and has by her issue, born alive, which are capable of inheriting her estate. In this case he shall, on the death of his wife, hold the lands for his life as tenant by the curtesy of England.” There are four requisites necessary to make a tenant by the curtesy:—

- (1) A legal marriage.
- (2) The seizin of the wife must be an actual seizin or possession of the lands; not a bare right to possess, which is a seizin in law, but an actual possession, which is a seizin in deed. And, therefore, a man shall not be a tenant by the curtesy of a remainder or reversion expectant on an estate of freehold, though it would be otherwise if expectant on an estate for years, as in the latter case the seizin of the freehold is not in the tenant for years, but in the remainderman or reversioner. This actual possession, however, is not necessary in the case of an equitable estate.
- (3) The issue must be born alive, and the issue must be such as is capable of inheriting the mother's estate. Therefore, if a woman be tenant in tail male, and hath only a daughter born, the husband is not thereby entitled to be tenant by the curtesy; because such issue female can never inherit the estate in tail male.
- (4) Death of the wife.

Armour on Real Property 115-118.

It is submitted that the following statement sets forth all the cases in which the husband is now entitled to curtesy in his wife's property (of which he cannot be deprived by his wife's will or conveyance *inter vivos*) or to an interest therein analogous to tenancy by the curtesy:—*

- (1) When a woman was married on or before the 2nd day of March, 1872, *without any marriage contract or settlement*, all real estate acquired by her, either before or after that date, and before the 1st day of July, 1884, is subject to curtesy; save only that between the 2nd day of March, 1872, and the 31st day of December, 1877, she was able, either by deed or will, to dispose of her property free from any claim of her husband as tenant by the curtesy.

See *Moore vs. Jackson*, 20 O. R. 652, and per Osler, J. A., 19 App. R., at p. 390 *et seq.*

- (2) *If in such a case as firstly mentioned, there be a marriage contract or settlement*, the husband retains all his common law rights in the property which the wife had at the time of the marriage and not included in the settlement (including his rights as tenant by the curtesy), but any property acquired by her after marriage, and not included in the settlement, falls within the operation of the Statute, and therefore becomes statutory separate estate, and is subject to rule number one.

See *Dawson vs. Moffatt*, 13 O. R. 170.

- (3) So also in such a case as firstly mentioned the husband has all his common law rights (including his rights as tenant by the curtesy) in lands received by his wife from him during coverture.

*Note.—Upon the question of whether any such estate as “tenancy by the curtesy,” strictly so called still exists in this province, see the chapter on “Succession.”

In the cases indicated in clauses (1), (2) and (3), it will therefore be necessary for the husband to join in the conveyance, in order that the grantee may acquire the lands free from the husband's interest as tenant by the curtesy.

In all other cases the wife is entitled as of right to convey or devise her lands free from curtesy, but if she does not dispose of the same either *inter vivos* or by will, the husband will at her death be entitled to his rights as tenant by the curtesy, whether the property be statutory separate estate or equitable separate estate.

See R. S. O. (1897), cap. 163, sec. 5 (3), and *Furness vs. Mitchell*, 3 App. R. 510.

It was provided by R. S. O. 1887, cap. 127, ss. 4 and 5, that in certain cases a judge might make an order that a married woman should be entitled to convey estate, or any interest therein, "in the same manner and with the same effect as if she was a *feme sole*." The Statute does not make any express provision as to the effect, if any, which the conveyance, made pursuant to the order, shall have upon the husband's rights as tenant by the curtesy.

In 1888 another Statute was passed (51 Vic., cap. 21, sec. 2, now contained in R. S. O. 1897, cap. 165, secs. 9 and 10), dealing more specifically with this matter, and providing that, where a husband is entitled to tenancy by the curtesy, and in any case where a wife is unable to give a valid deed of her real estate without her husband joining therein, if the husband is of unsound mind, or is unable from any other cause to execute a conveyance, or his residence is unknown, or he is in prison, or living apart from his wife by mutual consent, or under circumstances which entitle her to alimony, or if he has deserted her, or if in the opinion of a judge of the High Court there is any other cause for so doing, such judge may, upon such evidence as to him seems meet, and upon such notice to the husband as he deems requisite, except in cases where the residence of the husband is not known, when the notice shall not be necessary, make a summary order that the wife may "in the same manner, and with the same effect, as if she were a *feme sole*, and free from any estate of her husband by the curtesy, bargain, sell and convey all or any part of her estate, title and interest of, in, to, or out of," the lands in question.

Tort, Rights and Obligations arising out of.—Before the Married Women's Property Acts a woman could not, without joining with her husband as a co-plaintiff, maintain an action for damages for a tort done to her, for, in the eye of the law, the husband and wife were one, and he was that one, and he was entitled to any such damages as might be recovered. So also it was futile to sue her for a tort done by her, because she had no property out of which damages could be recovered, and in this case the doctrine of identity of husband and wife operated to his detriment, and he, as the all-absorbing member of the marital alliance, became personally responsible for his wife's torts.

For a history of the law relating to the respective liabilities of the husband and wife, for the torts of the wife, in all cases where the marriage took place before the 1st day of July, 1884, see *Lee vs. Hopkins*, 20 O. R. 666, and 16 L. Q. Rev. 191, and as to the modification of the husband's liability introduced by the Act of 1884, see R. S. O. 1897, cap. 163, sec. 17.

A married woman may be sued either alone or jointly with her husband, or her husband may be sued alone, for her torts, whether ante-nuptial or post-nuptial; but where the marriage took

place on or after the first day of July, 1884, the liability of the husband will be limited to the amount of the property, if any, which belonged to the wife and which the husband acquired or became entitled to through his wife.

See R. S. O., cap. 163, sections 17 and 18.

It seems that the form of judgment settled in *Scott vs. Morley* (20 Q. B. D. 120) should be adopted not only in actions based upon contract, but also in actions based upon the tort of a married woman.

Re Turnbull, 1900, 1 Ch. 180; but see previous remarks as to form of judgment in action on contract.

A husband is liable (within the limits aforesaid) for his wife's fraud or deceit; but where such fraud or deceit is directly connected with a contract made with the wife, "and is the means of effecting it, and parcel of the same transaction," the fraud or deceit becomes merged in the contract, and neither husband nor wife can be sued for the tort; but "The cases in which the husband is to be held "exempt from his common law liability for his wife's torts must "be limited to cases in which the fraud is not only directly connected with the contract, and parcel of the same transaction, but "is also the means of affecting (in the sense of obtaining) the contract." Therefore where the contract was effected prior to and independently of the fraud complained of, the husband was held liable for his wife's deceit, although the contract and the deceit were both connected with the same transaction.

Earle vs. Kingscote, 1900, 1 Ch. 203.

A husband who was married before the first day of July, 1884, is liable in damages for slander by his wife.

Troeviss vs. Hules, 6 O. L. R., 574.

Transfers.—See "Bank Deposits," "Executrix."

Wages and Earnings.—See "Property."

Wills.—The existing statutory provisions as to married women's will may be found in R. S. O. 1897, cap. 128, secs. 6, 9 (5) and 26 (2)

For the history of the law on the subject of married women's wills, see 8 Can. L. T. 181, and 17 Can. L. T. 192 *et seq.*

PROVINCE OF ONTARIO

MARRIED WOMAN'S PROPERTY ACT

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CHAPTER 149

An Act Respecting the Property of Married Women.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Short Title.—This Act may be cited as *The Married Women's Property Act*. 3-4 Geo. V., c. 29, s. 1.

2. Interpretation.—In this Act,

(a) **"Contract."**—"Contract" shall include the acceptance of any trust or of the office of executrix or administratrix;

(b) **"Property."**—"Property" shall include a thing in action. 3-4 Geo. V., c. 29, s. 2.

3. Liabilities.—The provisions of this Act as to the liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by a married woman who is a trustee or executrix or administratrix, either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. 3-4 Geo. V., c. 29, s. 3.

4. Capacity of Holding Property as a Feme Sole.—(1) A married woman shall be capable of acquiring, holding and disposing by will or otherwise of any real or personal property as her separate property in the same manner as if she were a *feme sole* without the intervention of a trustee.

(2) **Power to Contract and to Sue and be Sued.**—A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property, and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise.

(3) **Married Woman as an Executrix, Administratrix or Trustee.**—A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly of property subject to any trust, may sue or be sued without her husband as if she were a *feme sole*.

(See The Married Women's Conveyances Act, Rev. Stat. c. 150, s. 4 [1]).

(4) **Construction of Contracts Prior to 13th April, 1897.**—Every contract entered into by a married woman, prior to the 13th day of April, 1897, shall be deemed to be a contract entered into by her with respect to and to bind her separate property unless the contrary is shown.

(5) **To what Extent Binding.**—Every contract entered into by a married woman prior to the said 13th day of April, 1897, with respect to and to bind her separate property shall bind, not only the separate property which she was possessed of or entitled to at the date of the contract, but also all separate property which she has since acquired or may hereafter acquire. 3-4 Geo. V. c. 29, s. 4.

5. Contracts on or after 13th April, 1897.—(1) Every contract entered into by a married woman on or after the 13th day of April, 1897, otherwise than as an agent

(a) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she was or was not in fact possessed of or entitled to any separate property at the time when she entered into such contract;

(b) shall bind all separate property which she may at the time or thereafter possess or be entitled to; and

(c) shall also be enforceable by process of law against all property which she may thereafter while discoverd possess or be entitled to.

(2) Nothing in this section shall render available to satisfy any liability or obligation arising out of such contract any separate property which she is restrained from anticipating. 3-4 Geo. V. c. 29, s. 5.

6. Rights of a Woman Married on or Before 4th May, 1859.—(1) Every married woman on or before the 4th day of May, 1859, without any marriage contract or settlement shall and may, from and after that date, notwithstanding her coverture, have, hold and enjoy all her real estate not on or before such day taken possession of by her husband by himself or his tenants, and all her personal property not on or before such day reduced into the possession of her husband, whether belonging to her before marriage or in any way acquired by her after marriage, free from his debts and obligations contracted after such day, and from his control or disposition without her consent in as full and ample a manner as if she were sole and unmarried.

(2) **Rights of a Woman Married Between 4th May, 1859, and 2nd March, 1872, as to Realty.**—Every woman married between the 5th day of May, 1859, and the 2nd day of March, 1872, both inclusive, without any marriage contract or settlement shall any may, notwithstanding her coverture, have, hold and enjoy all her real property, whether belonging to her before marriage or acquired by her in any way after marriage, free from the debts and obligations of her husband, and free from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried.

(3) **Exception.**—This section shall not extend to any property received by a married woman from her husband during coverture.

(4) **Rights of a Woman Married After 2nd March, 1872, as to Realty—Curtesy.**—The real estate of any woman married after the 2nd day of March, 1872, whether owned by her at the time of her marriage or acquired by her in any way after marriage, and the rents, issues and profits thereof respectively, shall, without prejudice and subject to the trusts of any settlement affecting the same, be held and enjoyed by her for her separate use, free from any

estate therein of her husband during her lifetime, and from his debts and obligations, and from any claim or estate by him, as tenant by the curtesy; and her receipt alone shall be a discharge for any rents, issues and profits of the same; but nothing herein contained shall prejudice the right of the husband as tenant by the curtesy in any real estate of the wife which she has not disposed of *inter vivos* or by will.

(5) Rights of a Woman Married Since 4th May, 1859, as to Personality—Proviso.—Every woman married since the 4th day of May, 1859, without any marriage contract or settlement shall and may, notwithstanding her coverture, have, hold and enjoy all her personal property, whether belonging to her before marriage or acquired by her in any way after marriage, free from the debts and obligations of her husband, and free from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried; but this subsection shall not extend to any property received by a married woman from her husband during coverture. 3-4 Geo. V., c. 29, s. 6.

7. Earnings of Married Women.—(1) Every married woman, whether married before or after the passing of this Act, shall have and hold as her separate property, and may dispose of as such, the wages, earnings, money and property gained or acquired by her in any employment, trade or occupation in which she is engaged or which she carries on and in which her husband has no proprietary interest, or gained or acquired by her by the exercise of any literary, artistic or scientific skill.

(2) Rights of a Woman Married on or after 1st July, 1884.—Every woman married on or after the first day of July, 1884, shall also be entitled to have and hold and to dispose of as her separate property all other real and personal property belonging to her at the time of marriage or acquired by or devolving upon her after marriage. 3-4 Geo. V., c. 29, s. 7.

8. Property Acquired After 1st July, 1884, by a Woman Married Before that Date.—Every woman married before the first day of July, 1884, shall be entitled to have and hold and to dispose of in manner aforesaid as her separate property all real and personal property her title to which, whether vested or contingent, and whether in possession, reversion or remainder, shall accrue on or after the said first day of July, including any wages, earnings, money and property so gained or acquired by her as aforesaid. 3-4 Geo. V., c. 29, s. 8.

9. Execution of General Power.—The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities and such property may be seized and sold under an execution against her personal representative after her separate property has been exhausted. 3-4 Geo. V., c. 29, s. 9.

10. Power of Court to Bind Interest. Imp. Act 44-45 V., c. 41, s. 39.—Notwithstanding that a married woman is restrained from anticipation the Court may, if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in any property. 3-4 Geo. V., c. 29, s. 10.

11. As to Stock, etc., to Which a Married Woman is Entitled.—All deposits, all sums forming part of public stocks or

funds which on the first day of July, 1884, were standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock or other interests of or in any corporation, company or public body, municipal, commercial or otherwise, or of or in any industrial, provident, friendly, benefit, building or loan society which, on the first day of July, 1884, were standing in her name shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, sum forming part of public stocks or funds or of any share, stock, debenture stock or other interest as aforesaid is standing in the sole name of a married woman shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use so as to authorize and empower her to receive or transfer the same and to receive the dividends, interest and profits thereof without the concurrence of her husband, and to indemnify all public officers, and all directors, managers and trustees of every such corporation, company, public body or society as aforesaid in respect thereof. 3-4 Geo. V., c. 29, s. 11.

12. As to Stock, etc., Transferred, etc., to a Married Woman.—(1) All such particulars mentioned in the next preceding section which after the first day of July, 1884, were placed or transferred in or into, or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property in respect of which, so far as any liability may be incident thereto, her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded or not.

(2) **Subject to Statutory or Other Provisions.**—Nothing in this Act shall require or authorize any corporation or joint stock company to admit any married woman to be a holder of any share or stock therein to which any liability may be incident contrary to the provisions of any statute, charter, by-law, articles of association or deed of settlement regulating such corporation or company. 3-4 Geo. V., c. 39, s. 12.

13. Investments in Joint Names of Married Women and Others.—All the provisions hereinbefore contained as to such particulars mentioned in section 11 which on the first day of July, 1884, were standing in the sole name of a married woman, or which after that time have been or shall be placed or transferred to or into or made to stand in the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title or interest of the married woman, to any of the particulars aforesaid which were standing in or which shall be placed or transferred to or into or made to stand in the name of any married woman jointly with any person or persons other than her husband. 3-4 Geo. V., c. 29, s. 13.

14. When Husband's Concurrence Dispensed With.—It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such particulars named in section 11 which shall be standing in the sole name of any married woman, or in the name of such married woman jointly with any person not being her husband. 3-4 Geo. V., c. 29, s. 14.

15. Investments with Money of Husband.—(1) If any investment in any of the particulars set forth in section 11 shall have

been made by a married woman by means of money of her husband, without his consent, the Court may, upon an application under section 20 of this Act, order such investment and the dividends thereof, or any part thereof, to be respectively transferred and paid to the husband.

(2) **Rights of Creditors Preserved.**—Nothing in this Act shall give validity as against creditors of the husband to any gift by a husband to his wife of any property in fraud of his creditors, or to any deposit or other investment of money of the husband made by or in the name of his wife in fraud of his creditors; but any property or money so deposited or invested may be followed as if this Act had not been passed. 3-4 Geo. V., c. 29, s. 15.

16. Remedies of Married Women for Protection and Security of Separate Property. Torts as Between Husband and Wife.—Every woman whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same remedies for the protection and security of her own separate property as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. 3-4 Geo. V., c. 29, s. 16.

17. Wife's Ante-Nuptial Debts, Contracts and Torts.—(1) A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted and all contracts entered into or wrongs committed by her before her marriage, and she may be sued for any such debt, and for any liability in damages or otherwise under any such contract or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts or wrongs and for all damages or costs recovered in respect thereof.

(2) **Saving.**—Nothing in this Act shall operate to increase or diminish the liability of any woman married before the first day of July, 1884, for any such debt, contract or wrong. 3-4 Geo. V. c. 29, s. 17.

18. Liability of Husband.—(1) A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, and for wrongs committed by her after marriage, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him and any sums for which judgment may have been *bona fide* recovered against him in any legal proceeding in respect of any such debts, contracts or wrongs, for or in respect of which his wife is liable; but he shall not be liable for the same any further or otherwise.

(2) **Court May Direct Inquiry.**—The court in which a husband is sued for any such debt or liability may direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount or value of such property.

(3) **Saving.**—Nothing in this Act shall operate to increase or diminish the liability of any husband married before the first day of July, 1884, for or in respect of any such debt or other liability of his wife. 3-4 Geo. V., c. 29, s. 18.

19. Parties to Actions.—(1) A husband and wife may be jointly sued in respect of any such debt or other liability, whether for contract or for any wrong contracted or incurred by the wife if the plaintiff in the action seeks to establish his claim either wholly or in part against both of them.

(2) **Husband's Costs.**—If in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled he shall have judgment for his costs of defence whatever may be the result of the action against the wife if sued jointly with him.

(3) **What Judgment May be Entered.**—In any such action against husband and wife jointly if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages the judgment shall be a separate judgment against the wife as to her separate property only. 3-4 Geo. V., c. 29, s. 19.

20. Summary Disposal of Questions Between Husband and Wife as to Property.—(1) In any question between husband and wife as to title to or possession of property either party or any corporation, company, public body or society in whose books any stocks, funds or shares of either party are standing, may *apply in a summary way to a Judge of the Supreme Court* or at the option of the applicant, irrespectively of the value of the property in dispute, *to the Judge of the County or District Court of the county or district in which either party resides*; and the Judge may make such order with respect to the property in dispute and as to the costs of and consequent on the application as he thinks fit or may direct such application to stand over from time to time, and any inquiry or issue touching the matters in question to be made or tried in such manner as he shall think fit.

(2) **Appeal from Judge of Supreme Court.**—An order of a Judge of the Supreme Court, made under this section, shall be subject to appeal in the same way as an order made by the same Judge in an action in the said Court.

(3) **Appeal from County Court.**—An order of a County or District Court, under this section, shall be subject to appeal in the same manner as any other order made by the same Court.

(4) **Removal of Proceedings from County Court into Supreme Court.**—All proceedings in a County or District Court, under this section, in which, by reason of the character or value of the property in dispute, such Court would not have had jurisdiction if this Act had not been passed, may at the option of the defendant or respondent be removed as of right into the Supreme Court, but any order made or act done in the course of the proceedings prior to the removal shall be valid unless an order is made to the contrary by the Supreme Court.

(5) **Hearing.**—The Judge of the Supreme Court or County or District Court, if either party so request, may hear any such application in his private room.

(6) **Corporation's Costs.**—Any such corporation, company,

public body or society shall, in the matter of any such application, for the purposes of costs or otherwise, be treated as a stakeholder only. 3-4 Geo. V., c. 29, s. 20.

21. Saving of Settlements, and Restraints Against Anticipation.—Nothing in this Act shall interfere with or effect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors. 3-4 Geo. V., c. 29, s. 21.

22. When Married Women May Obtain an Order of Protection for the Earnings of Her Minor Children.—(1) Any married woman

- (a) having a judgment for alimony; or
- (b) who lives apart from her husband, having been obliged to leave him from cruelty or other cause which by law justifies her leaving him and renders him liable for her support; or
- (c) whose husband is a lunatic either with or without lucid intervals; or
- (d) whose husband is undergoing sentence of imprisonment in the Provincial Penitentiary or in any gaol for a criminal offence; or
- (e) whose husband from habitual drunkenness, profligacy or other cause neglects or refuses to provide for her support and that of his family; or
- (f) whose husband has never been in Ontario; or
- (g) who is deserted or abandoned by her husband.

Purport and Effect of such Order.—May obtain an order for protection entitling her, notwithstanding her coverture, to have and to enjoy all the earnings of her minor children, and any acquisitions therefrom, free from the debts and obligations of her husband and from his control or disposition, and without his consent, in as full and ample a manner as if she continued sole and unmarried.

(2) How and by Whom an Order Discharging Protection May be Obtained.—The married woman may at any time apply, or the husband or any of the husband's creditors may at any time, on notice to the married woman, apply for the discharge of the order of protection; and if an order for such discharge is made the same may be registered or filed in the same manner as the original order.

(3) By Whom to be Made in Cities and Towns—Registration.—Either order may issue in duplicate, and where the married woman resides in a city or town in which there is a Police Magistrate the order of protection or any order discharging the same shall be made by the Police Magistrate and shall be registered in the

registry office of the registry division in which the city or town is situate.

(4) **By Whom Order Made Elsewhere.**—Where the married woman does not reside in a city or town in which there is a Police Magistrate the order shall be made by the Judge or one of the Judges or the acting or Deputy Judge of the Division Courts or a Division Court of the county or district in which the married woman resides; and instead of being registered shall be filed for public inspection with the Clerk of the Division Court of the division in which the married woman resides.

(5) **Hearing.**—The hearing of an application for an order of protection or for an order discharging the same may be public or private at the discretion of the Judge or Police Magistrate.

(6) **Order Not to Have Effect Until Registered or Filed.**—The order for protection shall have no effect until it is registered or filed, and the registrar or clerk shall immediately on receiving the order endorse thereon the day of registering or filing the same.

(7) **Operation of Order Discharging.**—The order discharging an order of protection shall not be retroactive.

(8) **From What Time Order of Protection to Take Effect.**—The order of protection shall protect the earnings of the minor children of the married woman until an order is made discharging such order of protection, and the married woman shall continue to hold and enjoy to her separate use whatever, during the interval between the registering or filing of the order of protection and the making of the order discharging the same, she may have acquired by the earnings of her minor children. 3-4 Geo. V., c. 29, s. 22.

23. Legal Representative of Married Woman.—For the purposes of this Act the legal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities and be subject to the same jurisdiction as she would have had or been subject to if she were living. 3-4 Geo. V., c. 29, s. 23.

24. Married Women's Rights Prior to 1st July, 1884, Not Affected. 47 V., c. 19.—This Act shall not be construed to deprive a woman, married prior to the commencement of *The Married Women's Property Act*, 1884, of any right or privilege which she had at the time of the commencement of that Act or would afterwards have had if that Act had not been passed. 3-4 Geo. V., c. 29, s. 24.

PROVINCE OF ONTARIO.

THE MARRIED WOMAN'S CONVEYANCE ACT. CONTENTS.

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CHAPTER 150.

An Act to Facilitate the Conveyance of Land by Married Women.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Short Title.—This Act may be cited as “The Married Woman's Conveyance Act.” 3-4 Geo. V., c. 30, s. 1.

2. Interpretation.—In this Act

- (a) “Judge” shall mean a Judge of the Supreme Court.
- (b) “Land” shall mean and include land, chattels real, rents, and hereditaments, whether corporeal or incorporeal, and any undivided share thereof; any estate, right or interest therein whether legal or equitable; any charge, lien or incumbrance in, upon or affecting land, money subject to be invested in land; and any interest, charge, lien or incumbrance in, upon or effecting such money as aforesaid. 3-4 Geo. V., c. 30, s. 2.

3. Married Woman's Power to Convey Real Estate. Rev. Stat. c. 126.—Subject to the provisions of “The Land Titles Act” every married woman, being of the full age of twenty-one years, may execute a certificate of discharge of mortgage of land and may also by deed, convey her land and convey, release, surrender, disclaim or extinguish any interest therein, and release or extinguish any power vested in, or limited or reserved to her in regard to land, and bar or release her dower, and any right or inchoate right of dower in any land, and appoint an attorney for such purposes or any of them as fully and effectually as she could do if she were a *feme sole*. 3-4 Geo. V., c. 30, s. 3.

4. Married Woman as Executrix or Trustee. *Rev. Stat. c. 149.*—(1) A married woman who is an executrix or administratrix, alone or jointly with any other person or persons, of the estate of any deceased person, or a trustee alone or jointly of property subject to any trust, may transfer or join in transferring any such particulars as are mentioned in section 11 of "The Married Women's Property Act" without her husband as if she were a *feme sole*.

(See Married Woman's Property Act, R. S. O. c. 149, s. 4 [3]).

(2) **Bare Trustee.**—Where any freehold hereditament is vested in a married woman as a bare trustee she may convey or surrender the same as if she were a *feme sole*, and without her husband joining in the conveyance. 3-4 Geo. V., c. 30, s. 4.

5. Wife Purporting to Bar Dower Prior to 5th May, 1894, When Under Age—Exception.—59 V., c. 40.—Where a conveyance to a purchaser for value purporting to bar or release dower in any land was before the 5th day of May, 1894, executed by a wife entitled to an inchoate right of dower, and such wife was at the time of such execution under age, but the purchaser had at or before the execution of the conveyance and payment of the purchase money no notice that she was under age, the conveyance shall be effectual to bar her dower unless prior to the 1st day of January, 1899, she had brought an action for dower or had given to the owner of the land written notice of her claim to dower by reason of her minority; but nothing in this section shall affect any conveyance which prior to the 31st day of December, 1897, became valid under the Act passed in the fifty-ninth year of the reign of Her late Majesty Queen Victoria intituled *An Act relating to Dower in Certain Cases*. 3-4 Geo. V., c. 30, s. 5.

6. Married Women Under Twenty-one Barring Dower.—*Rev. Stat. c. 126.*—Subject to the provisions of *The Land Titles Act* a married woman, under twenty-one years of age, of sound mind, might on and since the 5th day of May, 1894, have barred and hereafter may bar her dower in any land by joining with her husband in a deed or conveyance thereof to a purchaser for value, or to a mortgagee, in which deed or conveyance a release or bar of her dower is contained, and she may in like manner release her dower to any person to whom such land has been previously conveyed. 3-4 Geo. V., c. 30, s. 5.

7. When Defective Conveyance to be Valid.—(1) Every conveyance before the 29th day of March, 1873, executed by a married woman or of affecting her land, to which her husband was a party, shall be deemed to have been valid and effectual to pass the estate which such conveyance purported to pass of such married woman in the land, notwithstanding

(a) **Absence of Certificate.**—The absence or want of a certificate of her consent to convey the same;

(b) **Irregularity in Certificate.**—Any irregularity, informality or defect in the certificate; and

(c) **Informal Conveyance.**—That such conveyance was not executed, acknowledged or certified as required by any Act at or before that date in force, or may not have been executed by the married woman in the presence of her husband, or on the same day on which or at the same place at which such conveyance was executed by her husband.

(2) **Saving as to Subsequent Conveyance Properly Executed.**—Nothing in this Section shall render valid any conveyance to the prejudice of any title subsequently to the execution of such conveyance and before the said date acquired from the married woman by deed executed and certified as by law required, unless the actual possession or enjoyment of the land conveyed or intended to be conveyed by the prior conveyance has been had at any time subsequent thereto by the grantee therein, or those claiming by, from or under him, and he or they have been in such actual possession or enjoyment continuously for the period of three years before the said date, and he or they were at that date in the actual possession or enjoyment thereof.

(3) **Absence of Good Faith.**—Nothing in this Act shall render valid any conveyance from the married woman which was not executed in good faith, or any conveyance of land of which the married woman or those claiming under her is or are in the actual possession or enjoyment contrary to the terms of such conveyance. 3-4 Geo. V. c. 30, s. 7.

8. Conveyance by Married Women Before 1st July, 1884.—

(1) Every conveyance before the 1st July, 1884, executed by a married woman of or effecting her land shall, notwithstanding her husband did not join therein, be deemed to have been valid and effectual to pass the estate which such conveyance purported to pass of such married woman in the land.

(2) **Saving as to Titles Acquired from Married Women Subsequent to Such Conveyance.**—Nothing in this section shall render valid any such conveyance to the prejudice of any title subsequently to the execution of such conveyance and before the 7th day of April, 1896, acquired from the married woman by deed duly executed as by law required, unless the actual possession or enjoyment of the land conveyed or intended to be conveyed by the prior conveyance shall have been had at any time subsequent thereto by the grantee therein or those claiming by, from or under him, and he or they shall have been in such actual possession or enjoyment continuously for the period of three years before that date, and he or they was or were at such date in the actual possession or enjoyment thereof.

(3) **Absence of Good Faith.**—Nothing in this section shall render valid any conveyance from the married woman which was not executed in good faith, or any conveyance of land of which the married woman or those claiming under her is or are in the actual possession or enjoyment contrary to the terms of such conveyance. 3-4 Geo. V. c. 30, s. 8.

9. Validity of Conveyance Made Since March 29th, 1873.—

(1) Every conveyance made on or after the 29th day of March, 1873, by a married woman of or effecting her land which was signed or executed by her husband shall be deemed to be valid and effectual to pass the estate of such married woman in such land which such conveyance purports to pass.

(2) Nothing in this section shall render valid any conveyance to the prejudice of any title lawfully acquired from any married woman prior to the 23rd day of April, 1887, nor render valid any conveyance from the married woman not executed in good faith or any conveyance of any land of which the married woman or those claiming under her was or were on that day in actual possession or enjoyment contrary to the terms of such conveyance, or affect any action or proceeding then pending.

(3) **Construction of any Earlier Statute not Affected.**—This section shall not be deemed to declare or imply any construction of any statute passed prior to the 23rd day of April, 1887, as affecting the matters mentioned in this section or any other matters relating to the rights or powers of married women. 3-4 Geo. V., c. 30, s. 9.

10. When Conveyance may be Made Free from Curtesy.—

(1) Where a husband is entitled to tenancy by the curtesy in the land of his wife, and where a married woman is unable to give a valid deed of her land without her husband joining therein, if the husband is in consequence of being a lunatic, idiot or of unsound mind, and whether so found by inquisition or not, or is from any other cause incapable of executing a deed or conveyance, or if his residence is not known, or he is in prison, or is living apart from his wife by mutual consent or under circumstances which entitle her to alimony, or if he has deserted her, or if there is in the opinion of the Judge any other cause for so doing, a Judge may, by an order to be made by him in a summary way upon the application of the wife upon such evidence as to him seems meet and upon such notice to the husband as he deems requisite, dispense with the execution of the deed or conveyance by or concurrence of the husband therein in any deed or conveyance of the land of his wife and enable the wife effectually to convey such land without such execution by or concurrence of the husband, and free from any estate of the husband by curtesy.

(2) **Mode of Execution by Wife—Effect.**—All acts or deeds done or executed by the wife in pursuance of such order in regard to her land shall be done, executed, or made by her in the same manner and with the same effect as if she were a *feme sole*, and when so done, executed or made by her shall be as good, valid and effectual as they would have been if the husband had become a party to and executed the same.

(3) **Dispensing With Notice.**—Where the residence of the husband is not known notice to him shall not be necessary.

(4) **Right of Married Women to Convey Not Affected.**—Nothing in this section shall be construed as implying that a married woman may not, without and irrespective of the provisions of this section, validly execute any deed, transfer or conveyance of her land, or of any right or interest therein, in all respects as if she were a *feme sole*. 3-4 Geo. V., c. 30, s. 10.

11. Form of Order.—The order may be in the form following:—

“The Married Woman's Conveyances Act.”

Upon application of A. B., of _____ the wife of C. B.,
(or formerly of, etc.) I, _____ one of the Judges of the
Supreme Court (or as the case may be), do, pursuant to “The Married Woman's Conveyances Act.” order that the said A. B., may, in the same manner, and with the same effect, as if she were a *feme sole*, and free from any estate of her husband by the curtesy, grant and convey all or any part of her estate, title and interest of, in, to or out of all and singular (describe the premises).

Dated this _____

day of _____

A.D. _____

(Signature of Judge).

3-4 Geo. V. c. 30, s. 11.

12. Registration.—The order may be in duplicate or in as many parts as are necessary and shall be signed by the Judge, and may be registered in the registry office of the registry division wherein the land to which the same relates is situate, upon its production and deposit, without any proof thereof, and either before or after the execution of the deed made in pursuance of such order 3-4 Geo. V., c. 30, s. 12.

13. Method.—The order may be indorsed or written upon the deed to which the same relates, in which case it shall be registered as part of the deed and the land to which the order relates may be described therein by reference to the description contained in the deed. 3-4 Geo. V., c. 30, s. 13.

14. Filing of Papers.—The affidavits and papers upon which the order is obtained shall be filed with the clerk in chambers and shall be transmitted by him to the Central Office. 3-4 Geo. V., c. 30, s. 14.

15. Judge's Fee for Order.—For every such order, including every duplicate or other part thereof, the Judge shall be entitled for his own use to a fee of \$2; but no other fee or charges shall be payable in respect thereof except for filing the affidavits and papers for which the same fees shall be charged, payable in law stamps, as are chargeable for filing papers in other matters. 3-4 Geo. V., c. 30, s. 15.

16. Fee for Registration of Order.—For the registration of such order, except where it is written upon and registered as part of the deed, including all necessary entries and certificates, the registrar shall be entitled to a fee of \$1. 3-4 Geo. V., c. 30, s. 16.

PROVINCE OF QUEBEC.

LAW RELATING TO MARRIED WOMEN.

The laws relating to married women in the Province of Quebec are based mainly upon the civil law of France, and are found in the Civil Code of the Province, and elsewhere in various Statutes. Certain important changes in the law effected in 1915 are noticed under the heading "Successions."

Anti-Nuptial Debts.—The payment thereof may be a matter of stipulation in any contract of marriage.

In the case of community of property, the community is liable for the moveable debts contracted by the wife before marriage, only in so far as they are established by an authentic act anterior to the marriage, or by an act which before that event had acquired a certain date, either by means of registration or of the death of one or more of its signers, or other sufficient proof. A somewhat different rule applies in commercial matters.

Creditors of the wife, who claim under acts, the date of which has not been established as above stated, cannot sue her for their payment, before the dissolution of the community.

The husband who claims to have paid a debt of this nature for his wife, cannot demand repayment of it either from her or from her heirs.

Authorization of Husband.—A wife cannot appear in judicial proceedings without her husband, or his authorization, even if she be a public trader or not common as to property; nor can she when separate as to property, except in matters of simple administration.

Even when not common as to property, she cannot give nor accept, alienate, nor dispose of property, *inter vivos*, nor otherwise enter into contracts or obligations, unless her husband becomes a party to the deed or gives his consent in writing.

If separate as to property, she may do and make alone all acts and contracts connected with the administrations of her property.

If a husband refuse to authorize his wife to appear in judicial proceedings or to make a deed, the judge may give the necessary authorization.

Similarly, if the husband be interdicted or absent, the judge may authorize his wife to appear in judicial proceedings or to contract.

Nor can she become a public trader without such authorization, express or implied.

General authorizations, even those stipulated by marriage contract, are only valid in so far as regards the administration of the wife's property.

The husband who is a minor may, in all cases, authorize his wife who is of age. If the wife is a minor, the authorization of her husband, whether he is of age or a minor, is sufficient for those cases only in which an emancipated minor might act alone.

Want of authorization, where it is required, is a cause of nullity which nothing can cover, and which may be taken advantage of by all those who have an existing and actual interest in doing so.

Community of Property.—Community of property results from the common law where there is no contract of marriage between the consorts.

By contract, however, community may be stipulated, or altered or modified.

The assets of the community consist of:—

1. All moveable property brought by either consort into the marriage, or which they acquire during marriage, by succession, gift, or otherwise.

2. All the fruits, revenues, interests, and arrears, which fall due or are received during marriage, and arise from property which belonged to the consorts at the time of their marriage, or from property which has accrued to them during marriage by any title.

3. Of all the immoveables they acquire during marriage.

However, immoveables which the consorts possess on the day of the marriage, or which fall to them during marriage by succession or an equivalent title, do not enter into the community.

The liabilities of the community consist of:—

1. All moveable debts due by the consorts on the day of marriage, or by successions falling to them during marriage.

2. Debts contracted by the husband during community, or by the wife with his consent.

3. Arrears and interest of such rents and debts as are personal to either.

4. Repairs which attach to the usufruct of immoveables that do not fall into the community.

5. The maintenance of the consorts, the education of the children, and all the other charges of marriage.

The husband alone administers, sells, alienates, or hypothecates community property, and without the wife's concurrence. He administers his wife's private property, but cannot, without her consent, dispose of her immovables.

Community of property is dissolved by natural death, by civil death, by separation from bed and board or of property, by the *absence* of one of the consorts in certain cases, and by divorce.

Contracts.—A wife cannot bind herself either with or for her husband, otherwise than as common as to property; any such obligation contracted by her in any other quality is void and of no effect; saving the rights of third parties in good faith.

As we have seen, if separate as to property a wife may do and make alone all acts and contracts, connected with the administration of her property.

As a duly authorized public trader, she may, without further authorization, obligate herself for all that relates to her commerce.

Otherwise she may not enter into contracts or obligations, unless her husband becomes a party to the deed or gives his consent in writing. See "Authorization of Husband."

Dissolution of Marriage.—Marriage can only be dissolved by the natural death of one of the parties; while both live it is indissoluble.

Domicile.—The domicile of a married woman not separated from bed and board, is that of her husband. She is bound to live with him, and to follow him wherever he thinks fit to reside.

Dower.—Dower may be either legal or customary, or conventional or prefixed.

Legal or customary dower is that which the law, independently of any agreement, and as resulting from the mere act of marriage, establishes upon the property of the husband, in favour of the wife as usufructuary, and of the children as owners.

Customary dower, therefore, consists in the usufruct for the wife, and the ownership for the children, of one-half of the immovables which belong to the husband at the time of the marriage, and of one-half of those which accrue to him during marriage from his father or mother or other ascendants.

Conventional or prefixed dower is that which the consorts agreed upon by contract of marriage.

Dower may be excluded by contract, or may during marriage be waived by the wife.

Dower is a right of survivorship, and opens upon the death of the husband.

Executrix.—Married women cannot accept testamentary executorship without the consent of their husbands.

A testamentary executrix separated as to property from her husband, may, if he refuse the consent necessary for her to accept or to exercise the office, be judicially authorized so to do.

Expenses of Marriage.—If the consorts are common as to property, the community is liable for the maintenance of the consorts, the education of the children, and for all the other charges of marriage.

If there is separation as to property by contract, each of the consorts contributes to the expenses of marriage according to the convenants contained in their contract. In the absence of such

convenants and of a mutual agreement, the court may determine the contributory portion of each according to their respective means and circumstances.

The wife who has obtained a judicial separation of property must contribute in proportion to her means and to those of her husband, to the expenses of the household as well as to those of the education of their common children.

She must bear these expenses alone if nothing remain to the husband.

Gifts.—The wife cannot make or receive gifts *inter vivos* without her husband's authorization.

After marriage, the consorts cannot confer benefits *inter vivos* upon each other; insurance by the husband upon his life in favour of his wife, and reasonable presents of wearing apparel, jewellery, etc., in proportion to his means, being excepted.

Intestacy.—See "Successions."

Property.—See "Community of Property," "Separation of Property," "Separation from Bed and Board."

Separation from Bed and Board.—Can be demanded only for specific causes, and cannot be based on the mutual consent of the parties.

A husband may demand the separation on the ground of his wife's adultery.

A wife may demand the separation on the ground of her husband's adultery, if he keeps his concubine in his common habitation.

Husband and wife may respectively demand this separation on the ground of outrage, ill-usage or grievous insult committed by one towards the other.

The wife, whether plaintiff or defendant in the action, may demand an alimentary pension.

In general, the children are entrusted to the party obtaining the separation. They are not by the separation of their parents deprived of any of their rights secured to them by law or by the marriage convenants of their parents.

Separation from bed and board carries with it separation of property, operates the dissolution of the community that may exist, and renders the wife capable of suing or being sued, and of contracting alone for all that relates to the administration of her property. In all matters tending to alienate her immoveable property, she still must be authorized.

Husband and wife so separated, may at any time, reunite, and put an end to the effects of the separation.

Separation of Property.—(a) **By Marriage Contract.**—The wife retains the administration of her property, moveable and immoveable, and the free enjoyment of her revenues.

She cannot, in any case, nor by virtue of any stipulation alienate her immovables without the special consent of her husband, or, on his refusal, without being judicially authorized.

See "Expenses of Marriage."

(b) **Judicial Separation.**—When the consorts are common as to property, a judicial separation of property may be obtained when the interests of the wife are imperilled and the disordered state of the husband's affairs gives reason to fear that his property

will not be sufficient to satisfy what the wife has a right to receive or to get back.

All voluntary separations are null.

If separation is ordered, the wife regains the uncontrolled administration of her property.

Successions.—A married woman cannot accept a succession during marriage, without her husband's consent.

By the Statute, 5 Geo. V., Cap. 74 (1915), several radical changes were made in the law relating to succession as between husband and wife. Prior to the passing of that statute, in the event of a consort dying intestate, his or her succession devolved to children and descendants, ascendants and collaterals of the deceased—not to the surviving consort unless in default of such relations or of relations within "the heritable degrees" (twelve degrees). This rule was not so apt to work an injustice where consorts were in community, because the survivor is entitled to one half of the community property. Where, however, the consorts were separate as to property, a widow might find herself penniless while her husband's legal heirs might receive large sums from his estate.

The law of 1915 has made a great improvement over these conditions. A general provision is first made that the surviving consort succeeds when the deceased consort leaves no issue and has no father or mother living, and is without collateral relations up to nephews or nieces in the first degree inclusively. But if the deceased leaves a consort capable of inheriting, and issue, the survivor takes one-third, and the child or children the other two-thirds—in equal shares if there are more than one. If there are no issue, but a surviving consort, and a father and mother, or either of them, and collateral relations up to nephews and nieces in the first degree inclusively, the surviving consort takes one-third, the father and mother or the one of them surviving take one-third, and the collateral relations take the other third. If the deceased die leaving no issue, but leaving a consort capable of inheriting, and a father or mother, or both, but leaving no collateral relations up to nephews or nieces in the first degree inclusively, the surviving consort takes half, and the other half devolves to the father or mother, or to both, as the case may be. If the deceased leaves a consort and collateral relations up to nephews and nieces in the first degree, only, the surviving consort takes half and the collaterals the other half. Where there are competing heirs the survivor must, in order to succeed, renounce all rights in any community and all rights of survivorship arising from marriage contract or by law, and even any insurance provided by the deceased consort. The surviving consort is excluded when the deceased consort died before majority. The consort surviving at the passing of the statute is also excluded where the deceased was interdicted prior thereto and dies without having been relieved from the interdiction.

Trader.—A married woman may become a public trader, with the authorization, express or implied, of her husband.

A wife who is a public trader may, without the authorization of her husband, obligate herself for all that relates to her commerce; and in such case she also binds her husband, if there be community of property between them.

Wills.—A wife may freely dispose of her property by will, without her husband's authorization.

PROVINCE OF NEW BRUNSWICK

LAWS RELATING TO MARRIED WOMEN.

The general rules relating to the property of married women in New Brunswick, will be found in "The Married Women's Property Act." Consolidated Statutes of N. B. 1903, cap. 78. The Act was passed by 58 V., cap. 24, and came into force on January 1, 1896.

Anti-Nuptial Debts and Liabilities.—To the extent of her separate property, a married woman is after her marriage, and continues, liable for all debts contracted and all contracts entered into, or wrongs committed by her before her marriage. She may be sued therefor, and her separate property alone is liable, unless by contract her husband is to any extent liable. Saving the provisions of the antecedant law.

The husband is otherwise responsible for his wife's anti-nuptial debts, contracts and torts, and for those arising after marriage, to the extent of all property whatsoever belonging to his wife, which he shall have acquired or become entitled to, from or through his wife, after deducting sums he may already have paid in exoneration thereof. Saving also any provisions of the antecedant law.

Husband and wife may be jointly sued in connection therewith, if the plaintiff seeks to establish his claim, in whole or in part, against both of them.

Bank Deposits, etc.—Bank deposits, shares, stocks, debentures etc., standing in her sole name at the passing of 58 Vict., cap. 24, are *prima-facie* evidence that they are her separate property, and that she is entitled to the profits therefrom.

If placed in the name of a married woman after the passing of the Act, 58 Vict., cap. 24, they shall be deemed to be her separate property, in respect of which, so far as any liability may be incidental thereto, her separate estate alone shall be liable.

Her husband need not join with her in the transfer thereof.

If any of these investments were made by her with her husband's money, but without his consent, he may secure a judicial order transferring them to his name and possession.

Contract.—A married woman may enter into any contract, and thereby bind herself to the extent of her separate property, may sue and be sued, as if a *feme sole*, without her husband being made plaintiff or defendant.

Every contract entered into by her, except as agent, binds:—

(1) Her separate property, whether at the time of contracting she is possessed of or entitled to any separate property,

(2) All separate property which she may then or thereafter be possessed of or entitled to,

(3) All property which she may thereafter while discovert, be possessed of or entitled to,

Though, with exceptions, separate property which at the time of the contract or thereafter, she is restrained from anticipating, is exempt.

Disputes.—Disputes between husband and wife concerning the title or possession of property, may, upon petition of either, or of any interested company, person, corporation or society, be summarily heard and decided by a judge of the Supreme Court sitting in equity.

Divorce.—See “Dower.”

There is a Provincial Divorce Court, and divorce may be granted for adultery, consanguinity within the terms prohibited by Act of Parliament made in the 32nd year of Henry III., and for impotence.

Dower.—*Consol. Stats., cap. 77.*

This Act does not affect the right of dower or to arrearages in any estate, of any widow dowable before the coming into force of the Act.

The widow is entitled to dower at law, as well as out of the equitable estate of her husband. Her dower extends also in certain cases to land in which her husband at his death had a right of entry or of action.

Dower is not recoverable out of land which when aliened or at the husband's death was in a state of nature.

Divorce, except in certain cases, does not bar dower, unless expressly so adjudged in the decree.

Executrix or Administratrix.—A married woman may act as an executrix or administratrix alone or jointly with others, and in connection with her trust may sue and be sued, and make transfers, as if a *feme sole*, without her husband.

Gifts.—See the law of Nova Scotia.

Investments.—See “Bank Deposits.”

Intestacy.—

A. PERSONAL PROPERTY.

Where there are no children, one-half goes to the widow, and where there are children, one-third goes to the widow and the balance to the children.

The husband gets one-half of his wife's personal property if she dies intestate leaving children; if there are no children he gets the whole.

B. REAL PROPERTY.

The real estate of a person dying intestate is divided equally among the intestate's children or their legal representatives, and in case there be no children, then to the next of kindred and their representatives, including those of the half-blood and their representatives.

Insurance.—See in general, the law of Nova Scotia.

In such case, she may be empowered by the courts to receive

Investments.—See “Bank Deposits.”

Orders of Protection.—As in the other Provinces, and for the same causes, a married woman may obtain a separation from her husband and a decree entitling her to alimony.

and control the earnings of her minor children, notwithstanding her coverture, free from the debts and obligations of her husband, and from his control or disposition.

PROPERTY.

(1) Acquisition.—A married woman may acquire, hold and dispose of by will or otherwise, any real or personal property as her separate property, as if a *feme sole*, without the intervention of any trustee.

(2) Control.—

A. REAL ESTATE.

1. If married before coming into force of 58 Vict., cap. 24.

Without prejudice, and subject to the trusts and provisions of any settlement affecting same, notwithstanding her coverture, she may have, hold, enjoy and dispose of all her real estate, belonging to her before marriage or actual in any way thereafter, otherwise than from her husband, free from his debts and obligations and from his control or disposition without her consent, as if a *feme sole* and unmarried.

2. If married after the coming into force of 58 Viet., cap. 24.

The wife holds her real estate, whether owned at marriage, or acquired in any manner during coverture, the rents, issues and projects thereof, without prejudice and subject to the trusts above mentioned, notwithstanding her coverture, for her separate use as explained above in 1.

The Act is not intended to prejudice the husband's tenancy or right of tenancy by the curtesy, in any real estate of his wife.

B. PERSONAL PROPERTY: EARNINGS.

Personal property, earnings, moneys acquired in any work, trade, or occupation in which her husband has no proprietary interest, or gained by the exercise of any literary, artistic or scientific skill, are her separate property, free from the debts and obligations of her husband.

(3) Protection.—Whether married before or after the passing of this Act, every married woman may in her own name exercise against all persons, even her husband, the same remedies for the protection and security of her separate property, as if it belonged to her as a *feme sole*.

Otherwise husband and wife may not sue one another for tort.

Restraints.—The Act does not affect settlements or agreements of settlement, made or to be made, before or after marriage, or interfere with any restriction against anticipation attaching to the enjoyment of any of her property.

But restrictions against anticipation contained in any settlement or agreement for a settlement, to be made or entered into by herself, under this Act, shall not be valid against her creditors.

Transfers.—See "Bank Deposits."

Wages and Earnings.—See "Personal Property."

**PROVINCE OF NEW BRUNSWICK.
MARRIED WOMAN'S PROPERTY ACT.
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N. B. MARRIED WOMAN'S PROPERTY ACT.

CHAPTER 78, CONSOLIDATED STATUTES, N. B. 1903.

CHAPTER 9, EDWARD VII. (1906).

CHAPTER 29, 6 GEORGE V. (1916).

1. Short Title.—This Chapter may be cited as "The Married Woman's Property Act," 58 V., c. 24, s. 1.

2. Contract.—Application of Chapter—Property.—In this Chapter the word "Contract" shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Chapter as to the liabilities of married women, shall extend to all liabilities by reason of any breach of trust, or devastavit, committed by a married woman, being a trustee or executrix or administratrix, either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration; and the word "property" in this Chapter shall include a chose in action and likewise all the classes of securities mentioned in section 8, 38 V., c. 24, s. 2.

Patterson and Bowmaster, 37 N. B. R. 4 (1904).

A contract by a married woman with her husband to cook in the lumber woods for a crew of men, whom her husband had engaged to get lumber for a third person under an agreement at a fixed price per thousand off the land of the third person, who was to furnish the supplies, is not a valid contract under "The Married Woman's Property Act" (Con. S. N. B. 1903, c. 78), and cannot be enforced as a lien under "The Woodman's Lien Act" (c. 148, C. S. N.B. 1903).

3. Married Woman to be Capable of Holding Property as a feme sole.—(1) A married woman shall be capable of acquiring, holding and disposing by will, or otherwise, of any real or personal property, as her separate property in the same manner as if she were a *feme sole*, without the intervention of any trustee.

(2) **Power to Contract—Joinder of Husband—Damages.**—A married woman shall be capable of entering into and rendering herself liable in respect of, and to the extent of her separate property on any contract, and of suing and being sued, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her, and any damages or costs recovered by her in any such action or proceeding, shall be a separate property, and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise.

(3) **Contract, to bind Separate Property.**—Every contract hereafter entered into by a married woman, otherwise than as agent,

(a) Shall be deemed to be a contract entered into by her in respect to and to bind her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract; Married Woman's Property Act of 1895.

Johnson vs. Jack and Bank of Nova Scotia, 35 N. B. R. 492.

In an action against a married woman on a contract, it is not necessary, under The Married Woman's Property Act of 1895, to

allege on the Record or prove on the trial as a fact, that either at the time the contract was made, or at the time the action was commenced, she had or was possessed of separate property.

(b) Shall bind all separate property which she may at that time, or thereafter, be possessed of or entitled to (58 V., c. 24, s. 3);

(c) Shall also be enforceable by process of law against all property which she may thereafter, while discoverd, be possessed of or entitled to;

Provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract, any separate property which at that time or thereafter she is restrained from anticipating. See 56-57 V., c. 62, s. 1. (Imp.).

4. Real and Personal Estate of Married Woman whether Married Before or After Commencement of this Chapter.—
(As amended by 6 Geo. V., cap. 29).

(1) Every woman, whether married before or after the commencement of this Chapter, shall, subject to the trusts and provisions of any settlement affecting the same, be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all real and personal which belonged or shall belong to her at the time of marriage, or has been, or shall be acquired by, or has devolved, or shall devolve upon her after marriage.

(2) **Property to be Deemed Separate Property in Respect of all Contracts and Torts.**—In respect to all contracts entered into or torts committed by a married woman after the commencement of this Chapter, all the property of such married woman mentioned in this section shall be deemed to be her separate property.

(3) **Saving of Husband's Curtesy.**—Nothing in this chapter contained shall prejudicially affect the husband's tenancy or right to tenancy by curtesy in any real estate held by his wife at the commencement of this chapter.

5. Earnings of Married Woman.—Every married woman, whether married before or after the commencement of this chapter, shall be entitled to have and to hold as her separate property, and to dispose of as her separate property, the wages, earnings, money and property gained or acquired by her in any employment, trade or occupation in which she is engaged or carries on, and in which her husband has no proprietary interest, or gained or acquired by the exercise of any literary, artistic or scientific skill. 58 V., c. 24, s. 5.

6. Execution of a General Power by Will.—The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other obligations in the same manner as her separate estate is made liable under this chapter. 58 V., c. 24, s. 6.

7. Power of Court to Bind Property—Subject to Restraint on Anticipation.—Notwithstanding that a married woman is restrained from anticipation, the Supreme Court in Equity may, if it thinks fit, when it appears to the Court to be for her benefit, by judgment or order with her consent, bind her interest in any property.

8. Deposits, Stocks, etc., Standing in Name of Married Woman at the Commencement of this Chapter.—All deposits, all sums forming part of public stocks or funds, and all shares, stock, debentures, debenture stock or other interests of or in any corporation, company or public body, municipal, commercial or otherwise, or in any industrial, provident, friendly, benefit, building or loan society, which at the time of the commencement of this chapter were standing in the sole name of a married woman, shall be deemed, unless and until the contrary be shown, to be the property of such married woman, and the fact that any such deposit so forming part of public stocks, funds or of any share, stock, debenture, debenture stock or other interest as aforesaid, is standing in the sole name of a married woman, shall be *prima facie* evidence that she is beneficially entitled thereto for her separate use so as to authorize and empower her to receive or transfer the same and to receive the dividends, interests and profits thereof without the concurrence of her husband, and to indemnify all public officers, and all directors, managers and trustees of every such corporation, company, public body or society as aforesaid in respect thereof. 58 V., c. 24, s. 8.

9. Deposits, Stocks, etc., Standing in Name of Married Woman after Commencement of this chapter.—All such property as is mentioned in the preceding section, which after the commencement of this chapter, may be placed or transferred to or made to stand in the sole name of any married woman, shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or registry wherein her title is entered or recorded or not: provided always, that nothing in this chapter shall require or authorize any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein, to which any liability may be incident, contrary to the provisions of any statute, charter, by-law, articles of association or deed of settlement regulating said corporation or company. 58 V., c. 24, s. 9.

10. Deposits, Stocks, etc., Standing in Joint Names of Married Woman and Others.—All the provisions hereinbefore contained as to such property as is mentioned in section 8, which at the time of the commencement of this chapter was standing in the sole name of a married woman, or which, after the commencement hereof, shall be placed or transferred to or into, or made to stand in the name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title or interest of the married woman, to any of the property which, prior to the commencement of this chapter, was standing in or which shall be placed or transferred to or into or made to stand in the name of any married woman jointly with any person or persons other than her husband. 58 V., c. 24, s. 10.

11. Joinder of Husband in Transfer of Stocks, etc., unnecessary.—It shall not be necessary for the husband of any married woman in respect of her interest to join in the transfer of any such property as is named in section 8, which shall after the commencement of this chapter be standing in the sole name of any married woman, or in the joint names of such married woman, and some other person or persons not being her husband. 58 V., c. 24, s. 11.

12. Investment Made by Married Woman with Husband's Money—Gifts, etc., to Wife in Fraud of Husband's Creditors.—

If any investment in any of the property set forth in section 8 shall have been made by a married woman by means of moneys of her husband, without his consent, the Supreme Court in Equity may, upon an application under Section 17 of this chapter, order such investment and the dividends thereof, or any portion thereof, to be transferred and paid respectively to the husband; and nothing in this chapter contained shall give validity as against creditors of the husband to any gift by a husband to his wife, of any property in fraud of his creditors, or to any deposit or other investment of the moneys of her husband made by or in the name of his wife in fraud of his creditors, but any property or moneys so deposited or invested may be followed as if this chapter had not been passed. 38 V., c. 24, s. 12.

Remedies for Protection of Separate Property:—Every woman married before or after commencement of this chapter, shall have in her own name against all persons whomsoever, including her husband, the same remedies for the protection and security of her own separate property as if such property belonged to her as a *feme sole*, but except as aforesaid no husband or wife shall be entitled to sue the other for a tort. In any proceeding under this section, it shall be sufficient to allege such property to be her property. 58 V., c. 24, s. 13.

14. Liability of Separate Property for Ante-Nuptial Contracts and Torts.—A married woman, after her marriage, shall continue to be liable in respect to the extent of her separate property for all debts contracted and all contracts entered into, or wrongs committed by her before marriage, and she may be sued for any such debts and for any liability in damages or otherwise under any such contract or in respect of any such wrong, and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property, and as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts or wrongs, and for all damages or costs recovered in respect thereof; provided always, that nothing in this chapter shall operate to increase or diminish the liability of any married woman before the commencement of this chapter for any such debt, contract or wrong aforesaid. 58 V., c. 24, s. 14.

15. Liability of Husband for Wife's Ante-Nuptial Contracts and Torts.—A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her before marriage, and for wrongs committed by her after marriage, to the extent of all property whatsoever belonging to his wife, which he shall have acquired or become entitled to, from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bona fide* recovered against him in any legal proceeding in respect of any such debts, contracts or wrongs, for or in respect of which his wife is liable, but he shall not be liable for the same any further or otherwise, and any Court in which the husband shall be sued for any such debt or liability, shall have power to direct any enquiry or proceeding which it may think proper for the purpose of ascertaining the nature, amount, or value of any such property; provided always, that nothing in this chapter contained, shall operate to increase or diminish the liability of any husband, married before

the commencement of this chapter, for or in respect of any such debt or other liability of his wife as aforesaid. 58 V., c. 24, s. 15.

16. Joinder of Husband and Wife in Actions.—A husband and wife may be jointly sued in respect of any such debt or other liability (whether for contract or for any wrong), contracted or incurred by the wife as aforesaid, if the Plaintiff in the action shall seek to establish his claim, either wholly or in part against both of them; and if any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him, or to which he may have become so entitled as aforesaid, he shall have judgment for his cost of defence, whatever may be the result of the action against the wife, if jointly sued with him, and in any such action against husband and wife jointly, if it appears that the husband is liable for debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife as to her separate property only. 58 V., c. 24, s. 16.

17. Question Between Husband and Wife as to Title to Property.—(1) In any question between husband and wife, as to the title to or possession of property, either party, or any corporation, or company, public body, or society, in whose books any stocks, funds or shares of either party are standing, may apply by summons, or otherwise, in a summary way to a judge of the Supreme Court sitting in Equity, and the Judge may make such orders with respect to the property in dispute, and as to the costs of and consequent on the application, as he thinks fit, or may direct such application to stand over from time to time, and any enquiry touching the matters in question to be made in such manner as he shall think fit.

(2) Any order of a Judge of the Supreme Court in Equity made under the provisions of this section, shall be subject to appeal in the same way as any order made in the said Court.

(3) The Judge, if either party so require, may hear any such application privately.

(4) Any such corporation, company, public body or society as aforesaid, shall in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only. 58 V., c. 24, s. 17.

DeBury vs. deBury, 36 N. B. R. 57.

The onus is upon the husband of establishing a resulting trust in his favour in land purchased by him in the name of his wife.

18. Married Woman as Trustee, Executrix, etc.—A married woman who is an executrix or administratrix alone, or jointly with any other person or persons, of the estate of any deceased person, or a trustee alone, or jointly as aforesaid, of property subject to any trust, may sue or be sued, and may transfer or join in transferring, in that character any such property without her husband as if she were a *feme sole*. 58 V., c. 24, s. 18.

19. Settlements and Restraints upon Anticipation.—Nothing in this chapter contained shall interfere with or affect any settlement, or agreement for a settlement, made or to be made,

whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached to, or to be hereafter attached to the enjoyment of any property or income by a married woman under any settlement, agreement for a settlement, will, or other instrument, except as herein otherwise provided, but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property, to be made or entered into by herself, shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors. 58 V., c. 24, s. 19.

20. Order Entitling Married Woman to Earnings of Minor Children in Certain Instances.—Any married woman having a decree for alimony against her husband, or any married woman

who lives apart from her husband, having been obliged to leave him from cruelty or other cause which by law justifies her leaving him and renders him liable for her support, or any married woman whose husband is a lunatic with or without lucid intervals, or any married woman whose husband is undergoing sentence of imprisonment in any goal or prison for a criminal offence, or any married woman whose husband from habitual drunkenness, profligacy, or other cause, neglects or refuses to provide for her support or that of his family, or any married woman whose husband has never been in this Province, or any married woman who has been deserted or abandoned by her husband, may obtain an order of protection, entitling her, notwithstanding her coverture, to have and to enjoy all the earnings of her minor children, and any acquisitions therefrom, free from the debts and obligations of her husband, and from his control or disposition.

(The following paragraph added. Cap. 9, Acts 1906).

And any married woman who lives apart from her husband for any of the causes hereinbefore in this section mentioned, or whose husband neglects to provide for her support or that of his family as aforesaid, or who has been deserted or abandoned by her husband as aforesaid, or who would on any ground be entitled to maintain a suit for a divorce *a mensa et thoro*, or for a divorce *a vinculo matrimonii* shall, with respect to any suit that may heretofore have been, or that may hereafter be instituted in any of the courts of this Province for any cause whatsoever, be deemed to have been or to be domiciled in this Province so long as she maintains a *bona fide* residence herein, and notwithstanding that her husband has acquired or may acquire after their separation a domicile in any other province, state, territory or country.

(2) The married woman may at any time apply, or the husband, or any of the husband's creditors, may at any time, on notice to the married woman, apply for the discharge of the order of protection, and if an order for such discharge is made, the same may be filed like the original order.

(3) Every order may issue in duplicate, and shall be made by the Judge of the County Court of the County in which the married woman resides, and shall be filed with the Clerk of such Court.

(4) The hearing of an application for an order of protection, or for an order discharging the same may be public or private at the discretion of the judge.

(5) The order for protection shall have no effect until it is filed and the Clerk shall, immediately on receiving the order, endorse thereon the time of filing the same, and a certificate of the filing, signed by the clerk for the time being, shall be *prima facie* evidence of such filing and date, and a copy of the order which is filed, certified under the hand of the clerk shall be sufficient *prima facie* evidence of the order, without proof of the signature of the clerk, and without further proof of the order itself, or of the making or validity thereof.

(6) The order for discharging an order for protection shall not in any case be retroactive, but shall take effect from the time it is made, and the order for protection shall protect the earnings of the minor children of the married woman until an order is made discharging such order of protection, and the married woman shall continue to hold and enjoy to her separate use whatever during the interval between the filing of the order of protection and the making of the order discharging the same, she may have acquired by the earnings of her minor children.

21. Legal Personal Representatives of Married Women.—

For the purpose of this chapter the legal personal representatives of any married woman shall in respect of her separate estate, have the same rights and liabilities and be subject to the same jurisdiction as she would have to be if she were living. 58 V., c. 24, s. 21.

22. January 1st, 1896.—Nothing in this chapter shall prejudicially affect the rights of any party in any suit or proceeding commenced before the first day of January, A. D. 1896; nor shall anything herein abridge the authority of "The Court of Divorce and Matrimonial Causes." 58 V., c. 24, s. 23.

23. This chapter shall be held to have been in force on and since the first day of January, A. D. 1896, and the words "hereafter" and "before the commencement of this chapter" when used herein shall be held to refer to said first day of January, A. D. 1896.

Everett vs. Everett (1908), 38 N. B. R. 390.

A purchaser under a mortgage of the property of a married woman, executed by her while living with her husband prior to The Married Woman's Property Act of 1895 (58 Vic., c. 24), not appearing to have been executed with the consent of her husband and not acknowledged as the statute requires cannot maintain ejectment against the mortgagor.

Lewin vs. Lewin (1904), 36 N. B. R. 365.

Married Woman's Property Act, cap. 24, 1895.

Where a child dies intestate and unmarried entitled to personal estate, leaving a father, mother, brother and sister, the father is entitled as next of kin in the first degree to the whole of the personal estate exclusive of all other.

This rule of construction, as to the distribution of personal property has not been in any way altered by any provision of the Married Woman's Property Act, 1895.

NOVA SCOTIA

MARRIED WOMAN'S PROPERTY ACT.

The laws relating to the property of married women in the Province of Nova Scotia are found in "The Married Women's Property Act." Statutes of 1898, cap. 22, Rev. Stats. N.S., 1900, cap. 112, and as amended.

Anti-Nuptial Debts.—To the extent of her separate property a married woman is liable for her anti-nuptial debts; the husband being liable therefor only to the extent to which he has acquired property by, through or from his wife, and then only after deducting sums which he has paid on account of such debts, or sums for which judgment has *bona fide* been recovered against him in respect to any such debts.

Bank Deposits, etc.—In general, all investments standing in her sole name, bank deposits, dividends, stocks, bonds or debentures, etc., are *prima facie* deemed to be her private property.

This is true also of similar investments standing in her name and that of another (excepting her husband) jointly.

A husband need not join in the transfer thereof.

Children.—Any agreement in writing made before marriage between an intended husband and an intended wife, or the father, guardian, or trustee of such intended wife, as to the religion in which the children of the intended marriage or any of them shall be brought up or educated, shall bind such husband and wife after such marriage and their representatives, unless changed by the mutual consent of both in writing.

Contract.—A wife may, as if a *feme sole*, bind herself upon any contract, in respect of and to the extent of her separate property, present or future. She may sue or be sued in connection with such contracts, without her husband being joined with her as plaintiff or defendant.

Property which she is restrained from anticipating is not rendered liable by her contracts; though the courts may order the payment of the costs of the opposite party out of such property, by the appointment of a receiver and the sale of the property or otherwise as is just.

Deeds.—Every deed made by a married woman of any real property, is valid if joined in by the husband and acknowledged by her as her free and voluntary act, without fear, threat or compulsion of, from, or by her husband.

See "The Married Women's Deeds Act." Rev. Stat. N. S., cap. 113.

Divorce.—There is a Provincial Divorce Court and divorce may be granted in the cases mentioned under the law of New Brunswick.

Dower.—The widow is entitled to one-third interest in the realty of her husband. She can enforce her claim to dower by actions specially provided, and may obtain damages for the wrongful withholding of her dower.

Where a testator by will manifests an intention to dispose of his real property in a manner inconsistent with his wife's right to dower, the widow shall be obliged to elect between the provisions made for her by the will and her dower.

There is no dower on unimproved land; and allowance is made therefor in dower of improved lands.

See Rev. Stats. N.S., cap. 114.

Executrix or Administratrix.—A married woman may, as if a *feme sole*, act as tutrix or administratrix, and may sue or be sued a *feme sole*, act as tutrix or administratrix, and may sue or be sued in connection with her trust.

Gifts.—Husband and wife may mutually make gifts the one to the other, but the husband cannot validly make gifts to his wife and thereby defraud his creditors; nor can he, if fraud would result, make investments in her name with his money.

Husband's Interest in Wife's Realty.—Any estate or interest to which husband is entitled, by virtue of his marriage in any real property of his wife, whether acquired before or after April 19th, 1884, shall not during her life, or the life of any of her children who survive her, be subject to the debts of the husband, though the Act is not intended to affect any right obtained by any person before March 30, 1900, under any judgment or execution against a husband in respect to any such estate or interest acquired by him before March 30, 1900.

Investments.—See "Gifts," "Bank Deposits."

Investments fraudulently made by the wife with her husband's money, and without his consent, may be set aside and transferred to him, upon petition to the court.

Intestacy.—If a wife die intestate, her separate property is distributed as follows:—

(1) If she leaves issue, her husband in addition to interest as tenant by curtesy in her real property, shall take one-third of her personal property; and the residue of her personal property and her real property, subject to such tenancy by the curtesy, shall go to her children, and in the case of the death of any such child, to the legal representatives of such child.

(2) If she leaves no issue, one-half of her real and personal property shall go to her husband and the other half shall go to her ascendant and collateral relations as provided in the Act.

If the husband die intestate, his real property (saving the widow's dower rights) is divided equally among his children. If there are no children, one half goes to his father, and the other half to his widow in lieu of dower.

As to his personal property, if he leaves issue, one-third goes to his widow; if no issue, one-half to the widow. If he leaves no issue or next of kin, the whole of his personal property devolves to his widow.

See "Descent of Real and Personal Property." Rev. Stat. N.S., cap. 140.

Insurance.—A wife may insure her own or her husband's life and enjoy the benefits of such insurance.

Where, however, a decree of divorce intervenes because of the

wife's adultery, or where she is guilty of adultery after her marriage and during coverture, which has not been condoned by her husband, the benefit of the insurance effected by the husband on his own life passes, not to the wife, but to the children.

The insurance company may plead such divorce or adultery as a bar to her action to recover insurance so effected by the husband.

Orders of Protection.—See the laws of New Brunswick.

Solemnization of Marriage.—See 2 Geo. V., ch. 44.

PROPERTY.

Acquisition.—A married woman may acquire, hold and dispose of by will or otherwise, any real or personal property as her separate property, as if a *feme sole*, without the intervention of a trustee.

Control.—She holds as her separate property, all that she brought into the marriage and all that she acquires thereafter, including wages and profits earned in business or by the practice of the arts.

Protection.—See the laws of New Brunswick.

Restraints.—Although a married woman is restrained from anticipation of any property, the court or a judge may, where it appears for her benefit by judgment or order with her consent bind her interest in any such property.

Trade.—A wife may engage separately in trade, but must (or her husband on her behalf) file in the local registry office, a certificate giving the names of husband and wife, the nature and place of business. Otherwise her property invested in the business is subject to execution as the property of the husband, and the husband is liable for all debts contracted by reason of such business.

Transfers.—See "Bank Deposits."

BRITISH COLUMBIA

MARRIED WOMAN'S PROPERTY ACT

The law governing the property rights of married women in British Columbia is found in the "Act Respecting the Property of Married Women." R. S. B. C., cap. 130 and as amended.

Anti-Nuptial Debts.—After the marriage, to the extent of her separate property, a wife is liable for all debts, contracts and wrongs, entered into or committed before her marriage; and as between her and her husband, unless there be any contract between them to the contrary, her separate property is primarily liable therefor.

Women married before April 7, 1887, however, are subject to the law as it then existed.

In certain cases the husband may be in part responsible for his wife's anti-nuptial debts.

Husband and wife may be jointly sued therefor, if the Plaintiff seeks to establish his claim, wholly or in part, against them both.

Bank Deposits, etc.—See law of Nova Scotia.

Contracts.—A married woman may enter into any contract, and to the extent of her separate property, render herself liable thereupon. In connection with her contract she may sue or be sued, in contract or in tort, or otherwise, as if she were a *feme sole*. In such actions her husband need not be joined with her as Plaintiff or Defendant.

Damages and costs recovered by her are her separate property; and if recovered against her, are payable out of her separate property.

Her separate property is bound, whether at the time of contracting she is or is not possessed of or entitled to such property.

Property is exempt, however, which at the time of contracting or thereafter she is restrained from anticipating. Except that, in the discretion of the court before whom any action or proceeding is brought by a married woman, the costs of the opposite party may be ordered to be paid out of property which is subject to a restraint of anticipation.

Conveyances by Husband to Wife.—A husband may convey lands in fee simple or otherwise, or assign personal property, to his wife, without the intervention of any trustee.

Disputes as to Property.—If disputes arise between husband and wife as to the title to or possession of property, either party, or any corporation, company or society, in whose books any stocks, funds or shares of either party are standing, may apply by summary petition to the courts for a decision thereof.

Divorce.—R. S., B.C., cap. 62.

There is a Provincial Court for the hearing and decision of petitions for divorce, which may be obtained, according to circumstances, by husband or wife, on the ground of adultery, cruelty, or desertion without cause for two years and upwards.

Dower.—R. S., B.C., cap. 63.

A widow is not entitled to dower in land disposed of absolutely in his lifetime by her husband or by his will.

Her right to dower exists only in lands to which he, dying intestate, was beneficially entitled at his death.

A bequest of land to her by her husband may deprive her of dower in all other lands.

No gift or bequest made by any husband to or for the benefit of his widow or out of his personal estate, or of or out of any of his land not liable to dower shall defeat or prejudice her right to dower, unless a contrary intention shall be declared by his will.

Dower may be barred by a declaration to that effect in a deed by conveyance of land by or to the husband.

The husband's right of tenancy by the curtesy still exists.

Executrix or Administratrix.—The assumption of the duties of an executrix or administratrix, alone or jointly with others, entitles her to sue or be sued as if a *feme sole*, and to do all necessary acts in connection with her trust.

Gifts.—A husband may not in fraud of his creditors make gifts to his wife, or place in her name any moneys, investments, or deposits.

Insurance.—A wife may for her separate use and benefit, effect insurance upon her own or her husband's life.

Investments.—See "Bank Deposits," "Gifts."

If a wife invests moneys of her husband without his consent, the courts may order the transfer to his name of such investments fraudulently made.

Intestacy.—R. S., B., cap. 97.

Separate personal property of a husband is distributed, one-third to the widow and the remainder among the descendants per stirpes. If there are no children, one-half to the widow.

The wife's separate personal property is similarly distributed between the husband and children.

Real estate passes to lineal descendants, and those claiming under them per stirpes.

It is not intended, however, that the widow's right of dower, or the husband's right of curtesy, shall be impaired or affected by these rules.

Marriage Settlements.—See "Restrains."

Orders of Protection.—For his profligacy, insanity, cruelty, and for other causes, a wife may be separated from her husband and be granted alimony. In such case she is entitled to an order securing to her the earnings of her minor children free from her husband's debts and control, and without his consent.

PROPERTY.

(a) **Acquisition.**—A married woman may in general acquire, hold and dispose of by will or otherwise, any real or personal property as her separate property, as if she were a *feme sole* without the intervention of a trustee.

(b) **Control.**—A woman married since April 7, 1887, may hold or dispose of as her separate property, all real and personal property which belonged to her at marriage or is acquired thereafter, including wages, earnings, moneys, and property, gained in any employment, trade, or occupation, in which she is engaged separately from her husband; or by the exercise of any literary, artistic or scientific skill.

If married before April 7, 1887, she has the same rights with respect to similar property and earnings acquired since that date.

(c) **Protection.**—She has against all persons, in her own name, the same remedies for the protection of her separate property as if it belonged to her as a *feme sole*.

Restraints.—Existing settlements, whether made before or after marriage, respecting her property, and any restriction against anticipation at present attached, or to be hereafter attached, to the enjoyment of any property or income by her, are not affected by Act respecting the property of married women.

But no restriction against anticipation contained in any settlement, or agreement for a settlement, of a woman's own property, to be made or entered into by herself, shall have any validity against debts contracted by her before marriage; and no settlement, or agreement for a settlement, shall have any greater

force or validity against her creditors than a like settlement, or agreement, made or entered into by a man, would have against his creditors.

Transfers.—See “Bank Deposits.”

Tenancy by Curtesy.—See “Dower.”

Wages and Earnings.—See “Property.”

Wills.—Her will made during coverture, whether she is or is not possessed of or entitled to any separate property at the time, shall take effect as if it had been executed immediately preceding her death, unless the contrary appears by the will, and need not be re-executed or re-published after her husband's death.

PROVINCE OF BRITISH COLUMBIA.

MARRIED WOMAN'S PROPERTY ACT.

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CHAPTER 152.

An Act respecting the Property of Married Women.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

1. Short Title.—This Act may be cited as the “Married Women’s Property Act.” R. S. 1897, c. 130, s. 1.

INTERPRETATION.

2. In the construction of this Act—

“**Contract.**”—“Contract” shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by a married woman being a trustee or executrix or administratrix, either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration;

“**Property.**”—“Property” shall include a thing in action. R. S. 1897, c. 130, s. 2.

RIGHTS, PRIVILEGES, AND LIABILITIES OF MARRIED WOMEN.

3. Married Woman may Hold Real and Personal Property as if a Feme Sole.—A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise of any real or personal property as her separate property in the same manner as if she were a *feme sole*, without the intervention of any trustee. R. S. 1897, c. 130, s. 4.

4. May Bind her Separate Estate by Contracts.—May Sue or be Sued Alone.—A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, and, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise. R. S. 1897, c. 130, s. 5.

5. Effect of Contracts by Married Women.—Every contract

hereafter entered into by a married woman otherwise than as agent—

- (a) Shall be deemed to be a contract entered into by her with respect to and to bind her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract:
- (b) Shall bind all separate property which she may at that time or thereafter be possessed of or entitled to; and
- (c) Shall also be enforceable by process of law against all property which she may thereafter while discoverd be possessed of or entitled to:

Provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating. [56 & 57 Vict., c. 63, s. 1]; R. S. 1897, c. 130, s. 6.

6. Costs may be Ordered to be Paid out of Property Subject to Restraint on Anticipation.—In any action or proceeding now or hereafter instituted by a woman or by a next friend on her behalf, the Court before which such action or proceeding is pending shall have jurisdiction by judgment or order from time to time to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as may be just. [56 & 57 Vict., c. 63, s. 2]; R. S. 1897, c. 130, s. 7.

7. Feme Covert to have full Control of Property Possessed by her at time of Marriage or Acquired Afterwards.—Every woman who marries or has married after the seventh day of April, 1887, shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill. R. S. 1897, c. 130, s. 8.

8. Property Acquired after the Act by a Woman Married Before this Act to be Held by her as Feme Sole.—Every woman married before the seventh day of April, 1887, shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the said seventh day of April, 1887, including any wages, earnings, money, and property so gained or acquired by her as aforesaid. R. S. 1897, c. 130, s. 9.

9. As to Stock, etc., to which a Feme Covert is Entitled.—All deposits in any bank and all sums forming part of the public stocks or funds which on the seventh day of April, 1887, were standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit,

building, or loan society, which on the seventh day of April, 1887, were standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, sum forming part of public stocks, funds, or of any share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorise and empower her to receive or transfer the same, and to receive the dividends, interests, and profits thereof, without the concurrence of her husband, and to indemnify all public officers, and all directors, managers, and trustees of every such corporation, company, public body, or society as aforesaid in respect thereof. R. S. 1897, c. 130, s. 10.

10. As to Stock, etc., Standing in Name of Married Woman.—All such particulars mentioned in the last preceding section which since the seventh day of April, 1887, have been or shall be placed, or transferred in or into, or made to stand in, the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property in respect of which, so far as any liability may be incident thereto, her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not: Provided always that nothing in this Act shall require or authorize any corporation or joint-stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Statute, chapter, by-law, articles of association, or deed of settlement, regulating such corporation or company. R. S. 1897, c. 130, s. 11.

11. Investments in Joint Names of a Married Woman and Others.—All provisions hereinbefore contained as to such particulars mentioned in section 9 of this Act which, on the seventh day of April, 1887, were standing in the sole name of a married woman, or which after that time shall be, or be placed, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, on or after the seventh day of April, 1887, were or are standing in, or shall be placed, or transferred to or into, or made to stand in, the name of any married woman jointly with any person or persons other than her husband. R. S. 1897, c. 130, s. 12.

12. Remedies of Married Women for Protection and Security of Property.—Every woman, whether married before or after the passing of this Act, shall have in her own name against all persons whomsoever, including her husband, the same remedies for the protection and security of her own separate property as if such property belonged to her as a *feme sole*; but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any proceeding under this section, it shall be sufficient to allege such property to be her property; and in any proceeding under this section, a husband or wife shall be competent to give evidence against each other. R. S. 1897, c. 130, s. 13.

13. Wife's Ante-nuptial Debts and Liabilities.—A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted and all contracts entered into or wrongs committed by her before her marriage; and she may be sued for any such debt and for any liability in damages or otherwise, under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always that nothing in this Act shall operate to increase or diminish the liability of any woman married before the seventh day of April, 1887, for any such debt, contract, or wrong as aforesaid. R. S. 1897, c. 130, s. 14.

14. Married Woman an Executrix or Trustee.—A married woman who is an executrix or administratrix, alone or jointly with any other person or persons, of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer, or join in transferring, in that character, any such particulars as mentioned in section 9, without her husband, as if she were a *feme sole*. R. S. 1897, c. 130, s. 15.

15. Saving of Existing Settlements, and the Power to Make Future Settlements.—Nothing in this Act contained shall interfere with or affect any settlement, or agreement for a settlement, made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached, or to be hereafter attached, to the enjoyment of any property or income by a woman under any settlement, agreement for settlement, will, or other instrument; but no restriction against anticipation contained in any settlement, or agreement for a settlement, of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors. R. S. 1897, c. 130, s. 16.

16. Conveyances of Property by Husband to Wife Valid.—Notwithstanding any rule of law or equity to the contrary, a conveyance of lands in fee-simple or otherwise, or any assignment of personal property made by the husband of a married woman to such married woman, shall be effectual to vest the same according to the nature and tenor thereof, without the intervention of a trustee or trustees. R. S. 1897, c. 130, s. 17.

17. She May Effect Insurance on Her Own Life or That of Her Husband.—A married woman may, by virtue of the power of making contracts hereinbefore contained, effect a policy of insurance upon her own life or the life of her husband for her separate use; and the same and any benefit thereof shall enure accordingly. R. S. 1897, c. 130, s. 18.

18. (1) Will of Married Woman.—The will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testatrix, unless a contrary intention shall appear by the will, and such will shall not require to be re-executed or republished after the death of her husband.

(2) Execution of General Power.—The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act. [7 Will. 4 & 1 Vict., c. 26, s. 24; 56 & 57 Vict., c. 63, s. 3]; R. S. 1897, c. 130, s. 19.

19. Legal Representative of Married Woman.—For the purposes of this Act, the legal personal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living. R. S. 1897, c. 130, s. 20.

20. Distribution of Separate Estate of Married Woman Dying Intestate.—The separate personal property of a married woman dying intestate shall be distributed in the same proportion between her husband and her children as the personal property of a husband dying intestate is to be distributed between his wife and children; and if there be no child or children of the wife so dying intestate living at her death, then such property shall pass and be distributed as if this Act had not passed. R. S. 1897, c. 130, s. 21.

21. Conveyance of Land Made Without Consent of Husband to be Valid.—No conveyance by a married woman of real property acquired by her under any will or deed shall be deemed invalid or ineffectual, by reason only of such conveyance (whether made before or after the passing of this Act) having been made without the consent or concurrence of her husband. R. S. 1897, c. 130, s. 22.

22. As to Stock, etc., Standing in the Joint Names of a Married Woman and Others.—It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such particulars named in section 9 of this Act which are now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband. R. S. 1897, c. 130, s. 23.

23. Fraudulent Investments with Money of Husband.—Rights of the Husband's Creditors Thereof.—If any investment in any of the particulars set forth in section 9 of this Act shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section 32 of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband to any gift by a husband to his wife of any property in fraud of his creditors, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any property or moneys so deposited or invested may be followed as if this Act had not been passed. R. S. 1897, c. 130, s. 24.

PROTECTION ORDERS.

Cap. 41 (1915).

2. Re-enacts s. 24.—Section 24 of chapter 152 of the "Revised Statutes of British Columbia, 1911," being the "Married Women's Property Act," is hereby repealed, and the following is enacted in lieu thereof:—

"24. In What Cases a Married Woman may Have as Her Separate Property the Earnings of Herself and Her Minor Children.—Any married woman having a decree for alimony against her husband, or any married woman who lives apart from her husband, having been obliged to leave him from cruelty or other cause which by law justifies her leaving him and renders him liable for her support, or any married woman whose husband is a lunatic with or without lucid intervals, or any married woman whose husband is undergoing sentence of imprisonment in the Provincial Penitentiary, or in any gaol for a criminal offence, or any married woman whose husband from habitual drunkenness, profligacy, or other cause neglects or refuses to provide for her support and that of his family, or any married woman whose husband has never been in this Province, or any woman who is deserted or abandoned by her husband, shall have as her separate property her own earnings and wages, and the earnings and wages of her minor children living with her or in her custody."

ANTE-NUPTIAL DEBTS, ETC.

30. Husband to be Liable for His Wife's Debts Contracted Before Marriage to a Certain Extent.—A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, and for wrongs committed by her after marriage, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bona fide* recovered against him in any proceeding at law in respect of any such debts, contracts, or wrongs for or in respect of which his wife is liable; but he shall not be liable for the same any further or otherwise; and any Court in which a husband shall be sued for any such debt or liability shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of any such property: Provided always that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the seventh day of April 1887, for or in respect of any such debt or other liability of his wife as aforesaid. R. S. 1897, c. 130, s. 31.

31. Suits for Ante-nuptial Liabilities.—A husband and wife may be jointly sued in respect of any such debt or other liability (whether for contract or for any wrong) contracted or incurred by the wife as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him, or to which he shall have become entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the husband and wife jointly, if it appears that the husband is liable for the debt or damages re-

covered or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property, and as to the residue (if any) of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only. R. S. 1897, c. 130, s. 32.

DETERMINATION OF DISPUTES.

32. Questions Between Husband and Wife as to Property to be Decided in a Summary Way.—In any question between husband and wife as to the title to or possession of property, either party, or any corporation, company, public body, or society in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise, in a summary way, to any Judge of the Supreme Court, and the Judge may make such order with respect to the property in dispute, and as to the costs of and consequent on the application, as he thinks fit; or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit. R. S. 1897, c. 130, s. 33.

33. Appeal.—Any order of a Judge of the Supreme Court made under the provisions of the last preceding section shall be subject to appeal in the same way as an order made by the same Judge in a suit in the said Court would be. R. S. 1897, c. 130, s. 34.

34. Corporations, etc., to be Treated as Stakeholders.—Any such corporation, company, public body, or society as aforesaid shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only. R. S. 1897, c. 130, s. 35.

PROVINCE OF PRINCE EDWARD ISLAND

MARRIED WOMAN'S PROPERTY ACT

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PROVINCE OF PRINCE EDWARD ISLAND

AN ACT RESPECTING THE PROPERTY OF MARRIED WOMEN.

CHAPTER 9—ACTS 1903.

Preamble.—Be it enacted by the Lieutenant Governor and Legislative Assembly of the Province of Prince Edward Island, as follows:

1. Short Title.—This Act may be cited as “The Married Woman's Property Act, 1903.”

2. Interpretations.—In this Act the word “Contract” shall include the acceptance of any trust or of the office of Executrix or Administratrix, and the provisions of this Act as to the liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by a married woman being a Trustee or Executrix or Administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration; and the word “Property” shall include a thing in action.

3. Married Women May Acquire Property.—(1) A married woman shall be capable of acquiring, holding and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole* without the intervention of any trustee.

(2) **May Enter Into a Contract.**—A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued either in contract or in tort or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her, and any damages or costs recovered by her in any action or proceeding shall be her separate property, and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise.

(3) **Contract to Bind Separate Property.**—Every Contract hereafter entered into by a married woman shall be deemed to be a Contract entered into by her with respect to and bind her separate property unless the contrary be shown.—*Repealed cap. 5, Acts 1908.*

(4) Every contract entered into by a married woman with respect to and to bind her separate property, shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire. Repealed cap. 5, Acts 1908.

4. Power to Dispose of Property.—(1) Every married woman whether married before or after the passing of this Act, shall be entitled to have and to hold, and to dispose of as her separate property, as if she were a *feme sole*, the wages, earnings, money, and property, gained or acquired by her in any employment, trade or occupation in which she is engaged or which she carries on, and in which her husband has no proprietary interest, or gained or acquired by the exercise of any literary, artistic or scientific skill.

(2) Every married woman whether married before or after the passing of this Act, shall be entitled to have and to hold and to dispose of in manner aforesaid, as her separate property, all real and personal property acquired by her or devolving upon her or to which her title shall accrue after the passing of this Act.

5. Execution of Power by Will.—The execution of a general power by will, by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act.

6. Deposits in Banks, Shares, Stocks, etc.—All deposits in any Post Office or other Savings Bank or in any other Bank, all sums forming part of public stocks or funds which at the time of the passing of this Act, are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock or other interests of or in any corporation, company or public body, municipal, commercial or otherwise, or of or in any industrial, provident, friendly, benefit, building or loan society which at the time of the passing of this Act are standing in her name shall be deemed, unless and until the contrary be shewn, to be the separate property of such married woman, and the fact that any such deposit sum, forming part of public stocks or funds or of any share, stock, debenture, debenture stock or other interests, as aforesaid, is standing in the sole name of a married woman shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use so as to authorize and empower her to receive and transfer the same and to receive the dividends, interest and profits thereof without the concurrence of her husband, and to indemnify all public officers and all directors, managers and trustees of every such bank, corporation, company, public body or society, as aforesaid, in respect thereto.

7. Deemed Separate Property.—All such particulars mentioned in the next proceeding section which after the passing of this Act are placed, registered or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property in respect of which so far as any liability may be incident thereto, her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified or in the books or register wherein her title is entered or recorded or not; Provided always that

nothing in this Act shall require or authorize any Corporation or Joint Stock Company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident contrary to the provisions of any Statute, Charter, By-law, Articles of Association, or Deed of Settlement regulating such corporation or company.

8. All the provisions hereinbefore contained as to such particulars mentioned in section 6, which at the time of passing this Act are standing in the sole name of a married woman, or which after that time shall be placed, registered or transferred to or into or made to stand in the sole name of a married woman, shall respectively extend and apply so far as relates to the estate, right title or interest of the married woman to any of the particulars aforesaid which at the time of passing of this Act are standing in, or which shall be placed, registered or transferred to or into, or made to stand in the name of any married woman, jointly with any person or persons, other than her husband.

9. Husband Need Not Join in Transfer.—It shall not be necessary or the husband of any married woman in respect of her interest to join in the transfer of any such particulars named in section 6, which is now or shall be standing in the sole name of any married woman or in the joint names of such married woman and any other person or persons not being her husband.

10. Investment.—If any investment in any of the particulars set forth in section 6 shall have been made by a married woman by means of moneys of her husband without his consent, the Court may upon an application under section 15 of this Act, order such investment and the dividend thereof or any part thereof, to be respectively transferred and paid to the husband, and nothing in this Act contained shall give validity as against creditors of this husband, to any gift by the husband to his wife or any property in fraud of his creditors, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any property or moneys so deposited or invested may be followed as if this Act had not been passed.

11. Remedies of Married Women for Protection of Separate Property.—Every woman whether married before or after this Act shall have in her own name against all persons whomsoever, including her husband, the same remedies for the protection and security of her own separate property as if such property belonged to her as a *feme sole*. but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any proceedings under this Section it shall be sufficient to allege such property to be her property, and in proceedings under this section a husband or wife shall be competent to give evidence against each other.

12. Pre-Nuptial Contracts.—A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted and all contracts entered into and wrongs committed by her before her marriage, and she may be sued for any such debts and for any liability in damages or otherwise under any such contract, or in respect of any such wrong, and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property, and as between her and her husband

unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts or wrongs, and for all damages or costs recovered in respect thereof; Provided always that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract or wrong, aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under this Act hereby repealed or otherwise if this Act had not been passed.

13. Liability of Husband for Contracts and Torts of Wife Entered Into or Committed Before Marriage.—A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her before marriage to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife after deducting therefrom any payments made by him, and any sums for which judgment may have been *bona fide* recovered against him in any legal proceeding in respect of any such debts, contracts or wrongs, for or in respect of which his wife was liable before her marriage, but he shall not be liable for the same any further or otherwise; and any Court in which a husband shall be sued for any such debts or liabilities shall have power to direct any inquiry or proceeding which it may think proper for the purpose of ascertaining the nature, amount or value of such property: Provided always that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the passing of this Act, for or in respect of any such debt or other liability of his wife, as aforesaid.

14. Joint Liability of Husband and Wife.—A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife, as aforesaid, if the plaintiff in the action shall seek to establish his claim either wholly or in part against both of them; and if in any such action, or any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him, or to which he shall have become so entitled, as aforesaid, he shall have judgment for his costs of defence whatever may be the result of the action against the wife, if jointly sued with him, and in any such action against the husband and wife jointly, if it appears that the husband is liable for the debt or damage recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

15. Application in Certain Cases to be Made to Judge.—

(1) In any question between husband and wife as to the title to or possession of property, either party, or any bank, corporation, company, public body, or society in whose books any stocks, funds or shares of either party are standing may apply by summons or otherwise in a summary way to a Judge of the Supreme Court of Judicature of this Province, or to a Judge in Equity or (at

the option of the applicant if the value of the property in dispute does not exceed \$150.00) to the Judge of the County Court of the County in which either party resides, and the Judge may make such order with respect to the property in dispute and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and direct any inquiry touching the matters in question to be made in such manner as he shall think fit.

(2) **Appeal.**—Any order of a Judge of the Supreme Court or of a Judge in Equity made under the provisions of this section, shall be subject to appeal in the same way as an order made by the same judge in an action or other proceeding in the said Court.

(3) **Appeal.**—Any order of a Judge of the County Court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same Court.

(4) **Hearing of Appeal.**—The Judge of the Supreme Court or County Court or the Judge in Equity of either party so request may hear any such application in his private room.

Stakeholders.—Any such bank, corporation, company, public body or society, as aforesaid, shall in the matter of any such application for the purpose of costs or otherwise, be treated as a stakeholder only.

16. Married Woman Trustee, &c., may be Sued as a Feme Sole.—A married woman who is an executrix or administratrix alone, or jointly with any other person or persons of the estate of any deceased person or a trustee alone or jointly, as aforesaid, of property subject to any trust, may sue or be sued, and may transfer or may join in transferring in that character any such particulars as are mentioned in section 6 without her husband as if she were a *feme sole*.

17. Not to Effect Settlements.—Nothing in this Act contained shall interfere with or effect any settlement or agreement for a settlement made or to be made whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will or other instrument, but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself, shall have any validity against debts contracted by her before her marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

18. Protection Order re Earnings of Minor Children.—

(1) Any married woman having a decree for alimony, or any decree judgment or order in the nature of a decree or order for alimony against her husband, or any married woman who lives apart from her husband, having been obliged to leave him from cruelty or other cause which by law justifies her leaving him and renders him liable for her support, or any married woman whose husband is a lunatic either with or without lucid intervals, or any married woman whose husband is undergoing sentence or

imprisonment in any penitentiary or in any gaol for a criminal offence, or any married woman whose husband from habitual drunkenness, profligacy or other cause neglects or refuses to provide for her support and that of his family, or any married woman whose husband has never been in this province, or any married woman who is deserted or abandoned by her husband may apply to and obtain from a Judge of the Supreme Court or from a Judge in Equity an order of protection entitling her, notwithstanding her coverture to have and to enjoy all the earnings of her minor children, and any acquisitions therefrom free from the debts and obligations of her husband and from his control or disposition and without his consent, in as full and as ample a manner as if she continued sole and unmarried.

(2) **Discharge of Order.**—The married woman may at any time apply, or the husband or any of the husband's creditors may at any time on notice to the married woman apply for the discharge of the order of protection, and such Judge on sufficient cause shown may grant such discharge.

(3) **Hearing.**—The hearing of an application for an order of protection, or for an order discharging the same, may be public or private, at the discretion of the Judge.

(4) **Order to be Filed.**—Neither the order for protection nor the order discharging the same shall have any effect until the same is filed in the office of the Prothonotary of the County where such married woman resides, and the Prothonotary shall immediately on receiving the order endorse thereon the day of filing the same, and a certificate of the filing and date, signed by the Prothonotary, or Deputy Prothonotary, shall be *prima facie* evidence of such filing and date, and a copy of the order which is filed certified under the hand of the Prothonotary or Deputy Prothonotary to be a true copy thereof, shall be sufficient *prima facie* evidence of the order without proof of the order itself, or of the making or validity thereof.

Effect of Order.—(5) The order for discharging an order of protection shall not in any case be retroactive, but shall take effect from the time it is made and the order for protection shall protect the earnings of the minor children of the married woman until an order is made discharging such order of protection, and the married woman shall continue to hold and enjoy to her separate use whatever during the interval between the filing of the order or protection and the making of the order discharging the same, she may have acquired by the earnings of her minor children.

19. Liability of Married Women who are Infants.—Nothing herein contained shall enable any married woman under the age of twenty-one years to do any act or enter into any contract which she could not do if unmarried: Provided, however, that it shall be competent and lawful for any married female infant to bar or relinquish her dower or right of dower in any property of her husband by joining in a deed of conveyance thereof to a purchaser, for value, or in a mortgage (in which deed of conveyance or mortgage, a release or bar of dower is contained), and by executing and acknowledging the same in the usual manner.

20. Rights and Liabilities of Personal Representatives of Married Women.—For the purpose of this Act the legal personal representative of any married woman shall, in respect of her

separate estate, have the same rights and liabilities and be subject to the same jurisdiction as she would have or be if she were living.

21. Distribution of Personal Estate of Married Woman Dying Intestate.—The separate personal property of a married woman dying intestate shall be distributed in the same proportion between her husband and her children as the personal property of a husband dying intestate is distributed between his wife and children; and if there be no child or children living at the death of the wife so dying intestate, then such property shall pass and be distributed as if this Act had not been passed.

22. Repealing Section.—"The Married Woman's Property Act, 1896" is hereby repealed: Provided that such repeal shall not effect any act done or right acquired while such act was in force, or any right or liability of any husband or wife to sue or to be sued under the provisions of the said repealed act for or in respect of any debt, contract, wrong or other matter or thing whatsoever for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

CHAPTER 5—ACTS 1908.

An Act to amend "The Married Woman's Property Act," 1903.

Be it enacted by the Lieutenant-Governor and Legislative Assembly of the Province of Prince Edward Island, as follows:—

1. Married Woman's Act, 1903, Amended.—Sub-sections (3) and (4) of section three, of "The Married Woman's Property Act, 1903" are hereby repealed, and the following substituted in lieu thereof:

Every contract hereafter entered into by a married woman otherwise than as agent.

(a) **Contract to Bind Separate Property.**—Shall be deemed to be a contract entered into by her with respect to and to bind her separate property, whether she is or is not in fact possessed of or entitled to any separate property, at the time when she enters into such contract.

(b) **Then or Thereafter Owned.**—Shall bind all separate property, which she may at that time or thereafter be possessed of or entitled to, and

(c) Shall also be enforceable by process of law, against all property which she may thereafter, while discoverd, be possessed of or entitled to:

Proviso.—Provided that nothing in this section contained, shall render available to satisfy any liability or obligation arising out of such contract, any separate property which at that time or thereafter she is restrained from anticipating.

2. Court May Order and Enforce Costs.—In any action or proceeding now or hereafter instituted by a woman or by a next friend, on her behalf, the Court before which such action or proceeding is pending, shall have jurisdiction by judgment or order, from time to time, to order payment of the costs of the opposite party, out of property which is subject to a restraint on anticipa-

tion and may enforce such payment by the appointment of a receiver, and the sale of the property or otherwise as may be just.

3. Wills Act to Apply.—Section twenty-one of the "Wills Act," 6th Victoria, chapter 26, shall apply to the will of a married woman, made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or re-published after the death of her husband.

PROVINCE OF MANITOBA.

MARRIED WOMAN'S PROPERTY ACT.

The general rules relating to the property of married women in Manitoba, will be found in "The Married Women's Property Act, 63 and 64 V., cap. 27, Rev. Stat. Man. 1902, cap. 106.

Except as it has been modified, altered or repealed by the Provincial Legislature, the law of England as it was on the 15th day of July, 1870, is part of the law of the Province.

Anti-Nuptial Debts.—Unless otherwise stipulated by contract of marriage, the wife's property alone is liable for her anti-nuptial debts. The husband is liable therefor to the extent of all property belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting payments already made by him in connection therewith.

Bank Deposits, Shares, etc.—All property, shares, bonds, bank deposits, etc., standing in her name are deemed to be hers, until the contrary is shown.

If she has invested the moneys of her husband without his consent, he may obtain an order of the court transferring such investments to his name and control. He cannot make investments in his wife's name in fraud of his creditors.

Children.—The wife is subject to the same liability for the maintenance of children as is her husband.

Contract.—The wife may, if twenty-one years of age, enter into and bind herself by contract, sue or be sued, in contract or in tort, or otherwise, as if a *feme sole*. Her husband need not be joined with her as plaintiff or defendant.

Contracts made by her, otherwise than as agent, bind:—

1. Her separate property, whether at the time of the contract she is or is not possessed of or entitled to any property;
2. All property of which she may then or thereafter be possessed;
3. All property which she may thereafter, while discoverd, be possessed or entitled to.

However, property is not so liable which at the time of the making of the contract or thereafter she is restrained from anticipating.

Dower.—No widow whose husband died on or after the first day of July, 1885, or thereafter, shall be entitled to dower in the

land of her deceased husband; but she shall have the same right in such property as if it were personal property.

See R. S. M., cap. 48, sec. 19.

No husband shall be entitled to a tenancy by the curtesy in his wife's estate; but a husband whose wife died on or after the first day of July, 1885, or thereafter dies, took and shall take such interest in the land of his wife as a wife has in the estate of a deceased husband. *Ibid.* Section 20.

Executrix and Administratrix.—See the law of Ontario.

Fraudulent Investments.—See "Bank Deposits," "Gifts."

Gifts and Transfers between Consorts.—From and after July 1, 1885, husband and wife may validly convey and transfer property the one to the other, without the intervention of a trustee.

The husband may not in defraud of his creditors make over property or moneys to his wife.

Intestacy.—The property, real or personal of a married woman dying intestate, is distributed in the same proportions and in the same manner as the property of a husband dying intestate.

If the Deceased Leaves:

A widow and children.	{ One-third to the surviving consort, and two-thirds to the children.
A widow and no children	{ The whole estate, real and personal, to the widow.
Children only.	{ The whole estate, real and personal, to the children.

PROPERTY.

Acquisition, etc.—A married woman may acquire, hold, and dispose of by will or otherwise, any of her separate property, as if unmarried and a *feme sole*, without the intervention of a trustee.

Control.—Without prejudice, and subject to the trusts of any settlement affecting same, she may acquire, have, hold and dispose of all property of which she was seized at marriage or which in any way she acquires thereafter, otherwise than from her husband, free from his control and without liability for his debts.

If married before May 14, 1875, the law is the same as to property not reduced into possession by her husband.

She deals with her property alone, and receives rents, interests and profits, without her husband's consent being required.

The husband need not join in any transfer.

Protection.—She may exercise alone all remedies to secure and protect her property, against all parties; but except in this respect, husband and wife may not sue one another in tort.

Separation.—The wife may be judicially separated from her husband on the ground of his cruelty, lunacy, profligacy, etc., and is then entitled to alimony. In such cases she may be allowed by the court to enjoy the earnings of her minor children.

See: "The Summary Jurisdiction (Married Women) Act 1900," cap. 28, of the statutes of that year.

Wills.—A married woman may dispose of her property freely by will, as if unmarried.

**PROVINCE OF MANITOBA.
MARRIED WOMAN'S PROPERTY ACT.
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CHAPTER 123.

**AN ACT RELATING TO THE PROPERTY OF
MARRIED WOMEN.**

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as "The Married Women's Property Act." R. S. M., c. 106, s. 1.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—

(a) **"Married Woman" or "Wife."**—The expressions "married woman" and "wife" mean respectively a woman married either before or after the commencement of this Act, and whose husband is living;

(b) **"Property."**—The expression "property" means any real or personal property, of every kind and description, of a married woman, whether acquired before or after the commencement of this Act, and shall include the rents, issues and profits of any such real or personal property, and includes also things in action, and all annuities, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of any bank, and all shares, stock, debentures, debenture stock or of other interests of, or in any corporation, company or public body, municipal, commercial or otherwise, or of or in any industrial, provident, friendly, benefit, benevolent, building or loan society, and all wages, earnings, money and property, gained or acquired by a married woman, in any employment, trade or occupation in which she is engaged or which she carries on separately from her husband, and in which her husband has no proprietary interest, or by the exercise of her literary, artistic or scientific skill; and includes also land, messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description whatever the estate or interest therein may be, and whether legal or equitable, vested or contingent, in possession, reversion, expectancy or remainder, together with all paths, passages, ways, water courses, liberties, privileges and easements appertaining thereto, and all trees and timber thereon, and mines, minerals and quarries thereon or thereunder, unless any such are specially excepted;

(c) **"Contract."**—The expression "contract" includes the acceptance of any trust, or of the office of executrix or administratrix; and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee, or executrix, or administratrix, either before or after her marriage, and her husband shall not be subject to such liabilities, unless he has acted or intermeddled in the trust or administration. R. S. M., c. 106, s. 2.

CAPACITY AS TO PROPERTY.

3. Married Woman Capable of Holding Property as if Feme Sole.—A married woman shall be capable of acquiring, holding and disposing of, by will or otherwise, any of her property, in the same manner as if she were unmarried, without the intervention of a trustee. R. S. M., c. 106, s. 3.

4. Control of Separate Property.—A married woman shall without prejudice and subject to the trusts of any settlement affecting the same, be entitled to acquire, have, hold and dispose of all property of which she was seized at the time of her marriage, or which in any way whatsoever has been or shall hereafter be acquired by her, or has devolved or shall devolve upon her, after marriage, free from the control of her husband, and from any liability on account of his debts, as fully as if she were unmarried. R. S. M., c. 106, s. 4.

5. Property Standing in the Name of Married Woman at the Commencement of Act Deemed to be Her Property.—

All property which, at the commencement of this Act was, or thereafter shall be, standing in, or allotted to, or placed, registered or transferred in or into, or made to stand in, the sole name of a married woman shall be deemed, unless and until the contrary be shown, to be her property, in respect of which, so far as any liability may be incident thereto, her property alone shall be liable; and she alone shall be entitled to deal therewith, and to receive the rents, issues, dividends, interests and profits thereof; and any person dealing with a married woman in respect of any such property shall, in the absence of evidence to the contrary, be entitled to assume that she alone is the owner thereof, and entitled to deal therewith without the consent, concurrence or interference of her husband, and free from his control and debts. This section shall be deemed to extend and apply, so far as relates to the estate, right, title or interest of a married woman, to any property which, at the commencement of this Act was, or at any time afterwards shall be, standing in, or allotted to, or placed, registered or transferred in or into, or made to stand in, the name of a married woman jointly with any other person. R. S. M., c. 106, s. 5.

6. Power of Married Woman to Devise Her Property by Will.—A married woman may, by will, devise or bequeath her property in any manner she may see fit, as freely as if she were unmarried. R. S. M., c. 106, s. 6.

7. Husband may Make Valid Conveyance to Wife Without Intervention of Trustee—Section Retroactive.—A man may make a valid conveyance or transfer of his property to his wife, and a woman may make a valid conveyance or transfer of her property to her husband, without in either case the intervention of a trustee, and it is hereby declared that this section is intended to extend, and the provisions thereof shall be held to have extended, from and after the first day of July in the year 1885, and shall hereafter extend to all property in the Province of Manitoba, and to every estate and interest therein. R. S. M., c. 106, s. 7.

8. Husband Need not Join in Transfer of Married Woman.—It shall not be necessary for the husband of a married woman to join in the transfer of, or other dealing with, any property which is now, or shall at any time hereafter be, standing in the sole name of a married woman, or in the joint names of such married woman and any other person not being her husband. R. S. M., c. 106, s. 8.

9. Execution of General Power.—The execution of a general power, by will, by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her property is made liable under this Act. R. S. M., c. 106, s. 9.

10. Remedies of Married Woman for Protection, etc., of Separate Property.—A married woman shall have, in her own name, against all persons whomsoever, including her husband, the same remedies for the protection and security of her property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any proceeding under this section, it shall be sufficient to

allege such property to be her property, and in any proceeding under this section a husband or wife shall be competent to give evidence against each other. R. S. M., c. 106, s. 10.

CONTRACTS OF MARRIED WOMEN.

11. Power to Contract.—A married woman shall be capable of entering into and rendering herself liable on any contract, and of suing and being sued, in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in such action or proceeding shall be her property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her property, and not otherwise. R. S. M., c. 106, s. 11.

12. Effect of Contract.—Every contract hereafter entered into by a married woman, otherwise than as agent,—

- (a) shall be deemed to be a contract entered into by her with respect to, and to bind, her property, whether she is or is not in fact possessed of or entitled to any property at the time when she enters into such contract;
- (b) shall bind all property which she may at that time or thereafter be possessed of or entitled to; and
- (c) shall also be enforceable by process of law against all property which she may thereafter, while discoverd, be possessed of, or entitled to:

Proviso.—Provided that nothing in the last preceding paragraph contained shall render available to satisfy any liability or obligation arising out of such contract, any property which at that time, or thereafter, she is restrained from anticipating. R. S. M., c. 106, s. 12.

POWER OF COURT.

13. Power of Court to Bind Property Subject to Restraint on Anticipation for Costs.—In any action or proceeding instituted by a married woman, the court before which such action or proceeding is pending shall have jurisdiction, by judgment or order, from time to time to order payment of the costs of the opposite party, out of property which is subject to restraint on anticipation, and may enforce such payment by the appointment of a receiver and the sale of the property, or otherwise, as may be just. R. S. M., c. 106, s. 13.

14. Fraudulent Investments with Money of Husband.—If any investment in any property shall have been made by a married woman, by means of moneys of her husband, without his consent, the court may order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to her husband; and nothing in this Act contained shall give validity as against creditors of the husband to any gift by a husband to his wife, of any property, in fraud of his creditors, or to any deposit or other investment of moneys of the husband, made by or in the name of his wife in fraud of his creditors; but any property or moneys so deposited or invested may be followed as if this Act had not been passed. R. S. M., c. 106, s. 14.

ANTE-NUPTIAL DEBTS.

15. Married Woman's Ante-Nuptial Debts.—A married woman, after her marriage, shall continue to be liable in respect of and to the extent of her property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her property; and, as between her and her husband, unless there be any contract between them to the contrary, her property shall be deemed to be primarily liable for all such debts, contracts or wrongs, and for all damages or costs recovered in respect thereof. R. S. M., c. 106, s. 15.

16. Husband to be Liable for Wife's Ante-Nuptial Debts to a Certain Extent.—A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bona fide* recovered against him in any proceeding at law, in respect of any such debts, contracts or wrongs, for or in respect of which his wife was liable before her marriage, as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount or value of such property. R. S. M., c. 106, s. 16.

POWERS OF MARRIED WOMAN AS EXECUTRIX OR TRUSTEE.

17. Married Woman as Executrix or Trustee.—A married woman who is an executrix or administratrix, alone or jointly with any other person, of the estate of any deceased person, or a trustee, alone or jointly, of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such property, without her husband, as if she were a *feme sole*. R. S. M., c. 106, s. 17.

SETTLEMENTS.

18. Saving of Existing Settlements and Power to Make Future Settlements.—Nothing in this Act contained shall interfere with or affect any settlement, or agreement for a settlement, made or to be made, whether before or after marriage, respecting the property of a married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached, or to be hereafter attached, to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's property, to be made or entered into by herself, shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors. R. S. M., c. 106, s. 18.

LIABILITY FOR MAINTENANCE OF CHILDREN.

19. Maintenance of Children.—A married woman shall be subject to all such liability for the maintenance of her children as a husband is now by law subject to for the maintenance of his children;

Provided, always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children. R. S. M., c. 106, s. 19.

PROTECTION OF EARNINGS OF MINOR CHILDREN.

20. Cases in Which a Married Woman may Obtain an Order for Protection of the Earnings of Her Minor Children.—Purport and Effect of Order.—Any married woman having a judgment for alimony against her husband, or any married woman who lives apart from her husband, having been obliged to leave him on account of cruelty or other cause which by law justifies her leaving him, and renders him liable for her support, or any married woman whose husband is a lunatic, with or without lucid intervals, or any married woman whose husband is undergoing sentence of imprisonment for a criminal offence, or any married woman whose husband, from habitual drunkenness, profligacy or other cause, neglects or refuses to provide for her support and that of his family, or any married woman whose husband has never been in this Province, or any married woman who is deserted or abandoned by her husband, may obtain an order of protection, entitling her, notwithstanding her coverture, to have and to enjoy all the earnings of her minor children, and any acquisitions therefrom, free from the debts and obligations of her husband, and from his control or disposition, and without his consent, in as full and ample a manner as if she continued sole and unmarried.

(2) How and by Whom Order Discharging Protection May be Obtained.—Such married woman may at any time apply, or the husband or any of the husband's creditors may at any time, on notice to the married woman, apply, for the discharge of the order of protection; and if an order for such discharge is made the same may be filed like the original order.

(3) By Whom Order Made.—The order, in either case, shall be made by the judge, or one of the judges, or the acting or deputy judge, of the County Court of the judicial division in which the married woman resides; and shall be filed for public inspection with the clerk of such court.

(4) Hearing May be Public or Private.—The hearing of an application for an order of protection, or for an order discharging the same, may be public or private, at the discretion of the judge.

(5) Order not to Have Effect Until Registered or Filed.—The order for protection shall have no effect until it is filed, and the clerk shall, immediately on receiving the order, endorse thereon the day of filing of same; and a certificate of the filing and date, signed by the clerk for the time being, shall be *prima facie* evidence of such filing and date; and a copy of the order which is filed, certified under the hand of the clerk to be a true copy thereof, shall be sufficient *prima facie* evidence of the order, without proof of the signature of the clerk, and without further proof of the order itself, or of the making or validity thereof.

(6) **Time Discharging Order Shall Take Effect.**—The order for discharging an order of protection shall not in any case be retroactive, but shall take effect from the time it is made; and the order for protection shall protect the earnings of the minor children of the married woman until an order is made discharging such order of protection; and the married woman shall continue to hold and enjoy to her separate use whatever, during the interval between the filing of the order of protection and the making of the order discharging the same, she may have acquired by the earnings of her minor children. R. S. M., c. 106, s. 20.

RIGHTS AND LIABILITIES OF LEGAL REPRESENTATIVES.

21. Legal Representative of Married Woman.—For the purposes of this Act, the legal representative of any married woman shall, in respect of her property, have the same rights and liabilities, and be subject to the same jurisdiction, as she would have, or be subject to, if she were living. R. S. M., c. 106, s. 21.

PROVINCE OF SASKATCHEWAN.

MARRIED WOMAN'S PROPERTY ACT.

After the formation of the new Province, the laws relating to the property of married women were formulated in the "Act Respecting the Property of Married Women." Statutes of 1907. 7 Edw. VII., cap. 18.

The Act is in many of its provisions similar to the Ontario Act.

Anti-Nuptial Debts.—See the Ontario law.

Bank Deposits, etc.—See the Nova Scotia law.

Contracts.—Whether married before or after the passing of the Act, she may contract and so render herself liable as if a *feme sole*, to the extent of her separate property.

Dower.—The wife has no dower, and the husband no tenancy by the curtesy.

Executrix or Administratrix.—A married woman may become an executrix or administratrix, alone or jointly with others, and in that capacity may sue or be sued, or transfer any investment without her husband as if a *feme sole*.

Gifts.—An Act does not give validity as against creditors of the husband to any gift by a husband to his wife of any property which after such gift continues to be in the order and disposition or reputed ownership of the husband, or to any investment of moneys of the husband made by or in the name of his wife in fraud of his creditors.

Money so invested or deposited may be followed by creditors.

Investments.—See "Gifts."

Intestacy.—Devolution of Estates Act, 7 Edw. VII., cap. 16. If the husband die intestate,

Leaving:—

A widow and children	{ One-third of his real and personal property goes to his widow, two-thirds to his children. There may be representation.
A widow and no children.	{ His whole estate, real and personal, to the widow.
Children only.	{ The whole estate, real and personal, to the children in equal shares. There may be representation.

The real and personal property of a married woman dying intestate is distributed in the same manner and in the same proportions.

If a wife has left her husband and has lived in adultery after leaving him, she shall take no part of his real or personal estate. The same rule holds good for the husband for the same offence. *Ibid.* Sections 13, 14.

Marriage Settlements.—The Act does not affect marriage settlements made or to be made, before or after marriage; and does not render inoperative any restriction against anticipation at the time of the passing of the Act attached to the enjoyment of any property or income.

But restrictions against anticipation contained in any settlement entered into by herself have no validity against her antinuptial debts. And no settlement shall have any greater validity against her creditors than a like settlement entered into by a man would have against his creditors.

Orders of Protection.—See the law of Ontario.

PROPERTY.

(a) **Acquisition.**—Without her husband's consent, a married woman may, whether married before or after the passing of this Act, acquire, hold and dispose of by will or otherwise, any real or personal property, whether acquired before or after the Act.

In respect to same, she shall be under no disabilities heretofore existing by reason of her coverture.

She has for these purposes the rights of a *feme sole*.

(b) **Control.**—She controls fully and as a *feme sole* her property, and as in the other Provinces is entitled to the use and enjoyment of money or property earned by her.

(c) **Protection.**—All civil remedies are at her disposal and against all persons, as if a *feme sole*, and her husband need not be joined with her as plaintiff or defendant.

But no action of tort shall be commenced between consorts except an action in respect of rights in, to, or out of real or personal property.

Restrains.—See "Marriage Settlements."

Tenancy by Curtesy.—See Dower.

Wages.—See "Property."

PROVINCE OF ALBERTA.

CHAPTER 47.

An Ordinance respecting the Personal Property of Married Women.

THE Lieutenant Governor, by and with the advice and consent of the Legislative Assembly of the Territories, enacts as follows :

1. Personal Property of Married Women.—A married woman shall in respect of personal property be under no disabilities whatsoever heretofore existing by reason of her coverture or otherwise but shall in respect of the same have all the rights and be subject to all the liabilities of a *feme sole*. C.O., c. 47, s. 1.



SUCCESSION DUTY ACT

4 GEORGE V.

CHAPTER 9

An Act respecting Succession Duties

[Assented to 19th February, 1914].

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. 1374 to 1387 R. S. Replaced.—Section twentieth of chapter fifth of title fourth of the Revised Statutes, 1909 (articles 1374 to 1387 inclusive), is replaced by the following:

“SECTION XX.

“DUTIES ON SUCCESSIONS.

“1374. Short Title.—This section may be cited as the “Quebec Succession Duties’ Act.”

1375. Tax Upon Property Transmitted Owing to Death.—All property, moveable or immoveable, the ownership, usufruct or enjoyment whereof is transmitted owing to death, shall be liable to the following taxes calculated upon the value of the property transmitted, after deducting debts and charges existing at the time of the death:

1. Direct Line.—In the direct line, ascending or descending; between consorts; between father- or mother-in-law and son- or daughter-in-law;

In estates the value of which, after deducting the debts and charges existing at the time of the death:

- (a) Does not exceed fifteen thousand dollars, no tax shall be exigible.
- (b) Exceeds fifteen thousand dollars, but does not exceed fifty thousand dollars, on every hundred dollars of value over five thousand dollars 1¼ p.c.
- (c) Exceeds fifty thousand dollars, but does not exceed seventy-five thousand dollars, on every hundred dollars of value over five thousand dollars. 1½ p.c.
- (d) Exceeds seventy-five thousand dollars, but does not exceed one hundred thousand dollars, on every hundred dollars of value over five thousand dollars .. 2 p.c.
- (e) Exceeds one hundred thousand dollars, but does not exceed one hundred and fifty thousand dollars, on every hundred dollars of value over five thousand dollars 3 p.c.
- (f) Exceeds one hundred and fifty thousand dollars, but does not exceed two hundred thousand dollars, on every hundred dollars of value over five thousand dollars 4 p.c.
- (g) Exceeds two hundred thousand dollars, on every hundred dollars of value over five thousand dollars.. 5 p.c.

Deduction to be out of Whole Estate.—For the purposes of clauses *b, c, d, e, f,* and *g*, the sum of five thousand dollars, therein mentioned, is to be deducted out of the whole estate, and not out of the share of each beneficiary.

Tax Payable on Certain Property Over \$100,000.—Provided that, in the case of a transmission in the direct line, ascending or descending, between consorts, between father or mother-in-law and son or daughter-in-law, when the amount passing to any one person exceeds one hundred thousand dollars, a further duty—in addition to the rate hereinbefore mentioned—shall be paid on the amount so passing, as follows:

Where the whole amount so passing to one person:

- (a) Exceeds one hundred thousand dollars, but does not exceed two hundred thousand dollars 1 p.c.
- (b) Exceeds two hundred thousand dollars, but does not exceed four hundred thousand dollars 1½ p.c.
- (c) Exceeds four hundred thousand dollars, but does not exceed six hundred thousand dollars 2 p.c.
- (d) Exceeds six hundred thousand dollars, but does not exceed eight hundred thousand dollars 2½ p.c.
- (e) Exceeds eight hundred thousand dollars 3 p.c.

2. Collateral Line.—In the collateral line:

- (a) If the succession devolves to the brother or sister, or descendant of the brother or sister of the deceased:
 - If the value of the property transmitted does not exceed ten thousand dollars 5 p.c.
 - If it exceeds ten thousand dollars 5½ p.c.
- (b) If the succession devolves to the brother or sister, or descendant of a brother or sister of the father or mother of the deceased:
 - If the value of the property transmitted does not exceed ten thousand dollars 6 p.c.
 - If it exceeds ten thousand dollars 6½ p.c.
- (c) If the succession devolves to the brother or sister, or descendant of the brother or sister of the grandparents of the deceased:
 - If the value of the property transmitted does not exceed ten thousand dollars 7 p.c.
 - If it exceeds ten thousand dollars 7½ p.c.
- (d) If the succession devolves to any other collateral within the heritable degrees:
 - If the value of the property transmitted does not exceed ten thousand dollars 8 p.c.
 - If it exceeds ten thousand dollars 9 p.c.

3. Stranger.—If the succession devolves to a stranger. 10 p.c.

Extra Duty if Transmission to Collateral or Stranger in Certain Cases.—Provided that in the case of a transmission in the collateral line or to a stranger, where the amount passing to any one person exceeds fifty thousand dollars, a further duty—in addition to the rates hereinabove mentioned in clauses 2 and 3—shall be paid on the amount so passing, as follows:

Where the whole amount so passing to one person:

- (a) Exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars 1 p.c.

- (b) Exceeds one hundred thousand dollars, but does not exceed one hundred and fifty thousand dollars ... 1½ p.c.
- (c) Exceeds one hundred and fifty thousand dollars, but does not exceed two hundred thousand dollars. 2 p.c.
- (d) Exceeds two hundred thousand dollars, but does not exceed two hundred and fifty thousand dollars 2½ p.c.
- (e) Exceeds two hundred and fifty thousand dollars, but does not exceed three hundred thousand dollars .. 3 p.c.
- (f) Exceeds three hundred thousand dollars, but does not exceed three hundred and fifty thousand dollars 3½ p.c.
- (g) Exceeds three hundred and fifty thousand dollars, but does not exceed four hundred thousand dollars. 4 p.c.
- (h) Exceeds four hundred thousand dollars, but does not exceed four hundred and fifty thousand dollars 4½ p.c.
- (i) Exceeds four hundred and fifty thousand dollars . 5 p.c.

"1376. Word "Property" Defined.—The word "property" within the meaning of this section includes all property, moveable or immoveable, actually situate within the Province, and all debts which were owing to the deceased at the time of his death, or are payable by reason of his death, and which are either payable in the Province, or are due by a debtor domiciled therein; the whole whether the deceased at the time of his death had his domicile within or without the Province, or whether the transmission takes place within or without the Province.

"1377. Deduction to be made Proportionately in Certain Cases.—In case the property transmitted forms only part of an estate, the other part of which is actually situated without the Province, the debts and charges existing at the time of the death shall be deducted from the value of the property in the Province only in the proportion which such property bears to the value of the whole estate.

"1378. 1. Policies under R. S. 7378. Dutiable.—Also Other Sums due by Insurer, which Devolve by Gratuitous Title.—Life insurance policies, effected or appropriated under the provisions of article 7378, shall be dutiable in the same manner as any other moveable property.

2. All other sums due by an insurer by reason of the death of any insured person, shall be considered for the purposes of this section, when they devolve by gratuitous title, as forming part of the property of such insured person, and shall be Subject to succession duties in the same manner as other property.

"1379. Certain Charitable Bequests not Dutiable.—No duty shall be leviable on property devised or bequeathed for religious, charitable or educational purposes, to be carried on by a corporation or person domiciled within the Province, but only to an amount not exceeding one thousand dollars in each case.

"1380. Every Heir etc., is Liable for his own Share only.—Every heir, universal legatee, legatee by general or particular title, or donee under a gift in contemplation of death, is personally liable for the duties due in respect of his share in the succession, and for no more.

By Whom Duty to be Paid in Certain Cases.—In the case of property transmitted in usufruct or with substitution, the tax shall

be paid by the usufructuary or the institute, and shall not be exigible from any further beneficiary.

No Personal Liability in Certain Cases.—No notary, executor, trustee or administrator shall be personally liable for the duties imposed by this section. Nevertheless the executor, the trustee or the administrator may be required to pay such duties out of the property or money in his possession belonging or owing to the beneficiaries, and if he fails so to do may be sued for the amount thereof, but only in his representative capacity, and any judgment rendered against him in such capacity shall be executed against such property or money only.

"1381. 1. Copy of Will to be Sent to Collector Within Certain Time After Decease.—Every heir, universal legatee, legatee by general or particular title, donee under a gift in contemplation of death, executor, trustee and administrator, or notary before whom a will or codicil to a will have been executed, shall, within thirty days after the death of the testator or intestate, forward to the collector of provincial revenue for the district wherein the testator died or the succession devolved, a copy of the testator's said will or codicil or of the said deed of gift.

"2. Declaration as to Value of Estate.—Every heir, universal legatee, legatee by general or particular title, donee under a gift in contemplation of death, executor, trustee or administrator, shall, within three months after the date of the death of the testator or intestate, transmit to such collector of provincial revenue a declaration under oath, setting forth:

(a) The name, surname, residence, address and calling of the declarant, and his relationship to the deceased, if any;

(b) The name and surname of the testator or intestate, and the place of the domicile of the testator or intestate at the time of his death;

(c) The description, situation and real value of all the property transmitted by the deceased;

(d) The amounts in detail of the debts and charges of the succession, with the names, surnames, residences and callings of all the creditors thereof;

(e) The names, surnames, residences, callings and relationship to the deceased (if any) of each and all the other beneficiaries;

(f) The nature and value of the share of the declarant in the succession, after deducting the debts and charges payable by him, or which affect the property composing such share; and, in so far as the same is known to him, the nature and value of the shares of each of the other beneficiaries, after making a like deduction as regards each of them.

Declaration by one of Parties Relieves the Others.—

A declaration duly made by one of the persons mentioned in paragraph 2 of this article, if it contains all the information necessary for ascertaining the amounts of all the duties payable in respect of the death, shall relieve all the others from the necessity of making such a declaration.

3. Deposit of Certain Wills.—In cases of property in this Province of persons dying outside the Province, the will shall be deposited and the declarations filed with the collector of provincial revenue for any one of the districts in which such property is situated.

4. Interim Declaration and Delay.—If, however, within the said three months, an interim declaration, under oath, is made by any of the beneficiaries, that it is impossible—within the said delay—to furnish the declaration mentioned in paragraph 2 of this article, the said collector may extend such delay for sixty days, and a further delay, not exceeding six months, may be granted by the Provincial Treasurer.

5. Statement of Amount due by Each Beneficiary.—On receipt of any declaration or declarations mentioned in paragraph 2 of this article, the said collector shall cause to be prepared a statement of the amount of the duty to be paid by each of the beneficiaries mentioned in such declaration, and by the executor, trustee or administrator (if any), in his representative capacity.

6. Statement to be Forwarded to each Beneficiary.—Suit if Amount not Paid.—The said collector shall forward to each beneficiary, executor, trustee or administrator, the statement which relates to him, by registered letter mailed to his address, and shall notify him to pay the amount of the duty mentioned therein within thirty days after the notice is sent; and if the amount is not then paid to him on the day fixed, the said collector may, subject to the provisions of article 1379, sue for the recovery thereof before any court of competent jurisdiction of his own district.

7. Transfer Invalid, &c., if Duties not Paid.—Penalty for Violation.—Subject to the provisions of article 1380, no transfer of the properties of any estate or succession shall be valid, nor shall any title vested in any person, if the taxes payable under this section have not been paid; and no executor, trustee, administrator, curator, heir, legatee or donee as aforesaid shall consent to any transfers or payments of legacies, unless the said duties have been paid, or unless a certificate has been delivered by the collector of provincial revenue to the effect that no duty is exigible. Any executor, trustee, administrator, curator, heir, legatee or donee as aforesaid violating the provisions of this paragraph is liable to a penalty equal to twice the amount of the duty.

8. Penalty if Declaration, &c., not Made.—If any declaration so required, is not made within the prescribed delay, or within any extended delay that may have been granted, or if any false or incorrect statement is made in any such declaration, either as to the value or otherwise, every heir, legatee or donee as aforesaid so in default or offending shall be liable to a penalty equal to twice the amount of the duties which he would have had to pay if he had made a proper declaration within such delay, and every executor, trustee or administrator so in default or offending, shall be liable to a penalty of not more than one thousand dollars; and in default of the payment of such penalty in either case, the offender shall be liable to imprisonment for not more than one month, and the amount of the personalty may be levied out of his personal property.

9. Petition for Discovery of Books and Papers.—Affidavit in Support.—Order of Court.—The provincial treasurer may, in his discretion, and upon such notice to the parties interested as the court or judge may prescribe, present a petition to the Superior Court of the domicile of any person having in his possession or under his control, any books or papers of a succession to which this section applies, or to a judge thereof, praying for an order commanding such person to produce such books or papers before

the court or judge, within such delay as the court or judge may fix, for the inspection of the provincial treasurer or of any person appointed by the latter for that purpose. Such petition shall be accompanied by an affidavit of the comptroller of provincial revenue, or of the proper collector of provincial revenue, setting forth that the deponent has reason to believe and does believe that the declaration made with respect to such succession under this article, has omitted or under-valued assets of the succession liable to duty, and that access to such books or papers has been refused him; and the court or judge, after summarily hearing the parties present, shall, in its or his discretion, give or refuse the order.

Production of Books, &c., and Inspection of Same.—Costs.—

Upon such order having been duly served upon such person, the latter shall be bound, subject to all legal penalties in case of default so to do, to produce such books or papers as aforesaid; and upon the same having been so produced, the provincial treasurer or his representative, subject to the orders which the court or judge may give in that behalf, may take communication of such books or papers, and make copies of or extracts therefrom.

The costs of such application and of the proceedings thereunder shall be in the discretion of the court or judge.

10. Interest on Past Due Debts.—Legal interest is exigible upon all amounts payable to the Crown under this section, after four months from the date of the decease.

“1382. Corporation, &c., to Notify Provincial Treasurer of Death of Shareholder, &c.—Every corporation, company or firm having its chief office or place of business in the province, in which any person dying outside of the province was possessed of any interest, shares, stock or bonds, must, within thirty days of the date whereon it obtains knowledge of the death, unless the provincial treasurer extends the delay for reasonable cause shown, send to the provincial treasurer a notice of the death, giving the date thereof and the full name, quality and domicile of the deceased and the amount of such interest, shares, stock or bonds; and in default of so doing, shall be liable to a penalty not exceeding fifty dollars.

“1383. Monthly Statements to Provincial Treasurer of Wills, &c.—The registrar of every registration division in the province shall, on or before the fifth day of each month, transmit to the provincial treasurer a statement of all wills, declarations of death, and contracts of marriage registered in the office of such registrar during the month immediately preceding; in default thereof, or in the event of any omission or false allegation in such statement, each such registrar shall be liable to a fine of ten dollars, and to a further fine of two dollars for each day he neglects to make such statement. If during such month, no such will, declaration of death, or contract of marriage has been filed with him, each registrar shall, under a like penalty, be obliged to make a return to the provincial treasurer to that effect.

“1384. Suits for Fines, &c.—All fines imposed by this section shall be paid to the collector of provincial revenue for the district in which such fines are incurred and collected, and shall be recovered before the Superior Court or the Circuit Court, according to the amount thereof, by suit, on behalf of His Majesty, taken by the collector of provincial revenue in his own name.

“1385. Privilege of Crown.—Any sum that may become due to the Crown, in virtue of this section, shall constitute a privileged debt, ranking immediately after law costs.

"1386. Percentage to be Retained by Collector.—The collector of provincial revenue who collects any sum in virtue of this section, shall be entitled to retain such percentage as the Lieutenant-Governor-in-Council may determine.

"1387. Regulations by Lieutenant-Governor-in-Council, &c.—The Lieutenant-Governor-in-Council may make, amend, replace and repeal all regulations and forms that he may consider necessary for the purpose of carrying out the provisions of this section, which regulations and forms shall come into force as soon as they are published in the *Quebec Official Gazette*.

"1387a. Certain Fees to be Taken.—The following fees shall be exacted for the furnishing by the collector of succession duties or collector of provincial revenue, as the case may be, to the representatives of deceased persons, of the information and documents hereinbelow specified, the said fees to form part of the consolidated revenue fund of the province:

For each extract from a document relating to a succession, and for each certificate delivered, with the exception of the first certificate (or certificates) given to such representatives	50c
For each search, for one year	20c
“ “ for each additional year	10c"

2. Application of this Act.—This Act shall apply to all property hereafter transmitted by death, and to all property heretofore so transmitted, in respect of which the taxes mentioned in the provisions repealed by this Act, have remained unpaid in whole or in part. Nevertheless the delays granted for the payment of any sum of money or the performance of any duty required to be paid or performed in virtue of this Act, may be extended by the Provincial Treasurer, but such extension shall in no case exceed six months.

3. Coming into Force.—This Act shall come into force on the day of its sanction.

4 GEORGE V.

CHAPTER 10

An Act respecting Succession Duties upon the transmission of certain moveable property of persons dying domiciled within the Province.

[Assented to 19th February, 1914]

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:—

1. R. S. 1387b to 1387i Enacted.—The following section is inserted in the Revised Statutes, 1909, after section twentieth of chapter fifth of title fourth thereof:

"SECTION XXa.

"DUTIES ON THE TRANSMISSION OF CERTAIN MOVEABLE PROPERTY.

"1387b Tax Upon Transmission Owing to Death of Property Situated Outside the Province.—All transmissions within the Province, owing to the death of a person domiciled therein, of

moveable property locally situate outside the Province at the time of such death, shall be liable to the following taxes calculated upon the value of the property so transmitted, after deducting debts and charges as hereinafter mentioned:

1. Direct Line.—In the direct line, ascending or descending; between consorts; between father- or mother-in-law and son- or daughter-in-law;

Where the total value of such moveable property, after deducting such debts and charges:

- (a) Does not exceed fifteen thousand dollars, no tax shall be exigible.
- (b) Exceeds fifteen thousand dollars, but does not exceed fifty thousand dollars, on every hundred dollars of value over five thousand dollars 1¼ p.c.
- (c) Exceeds fifty thousand dollars, but does not exceed seventy-five thousand dollars, on every hundred dollars of value over five thousand dollars 1½ p.c.
- (d) Exceeds seventy-five thousand dollars, but does not exceed one hundred thousand dollars, on every hundred dollars of value over five thousand dollars ... 2 p.c.
- (e) Exceeds one hundred thousand dollars, but does not exceed one hundred and fifty thousand dollars, on every hundred dollars of value over five thousand dollars 3 p.c.
- (f) Exceeds one hundred and fifty thousand dollars, but does not exceed two hundred thousand dollars, on every hundred dollars of value over five thousand dollars 4 p.c.
- (g) Exceeds two hundred thousand dollars, on every hundred dollars of value over five thousand dollars. 5 p.c.

Deduction to be out of Whole, and not out of Each Share.—

For the purposes of clauses *b. c. d. e. f. and g.* the sum of five thousand dollars therein mentioned, is to be deducted out of the whole of the property transmitted dutiable in virtue of this section, and not out of the share of each beneficiary.

Tax Payable on Certain Transmissions of Over \$100,000.—

Provided that, in the case of a transmission in the direct line, ascending or descending, between consorts, between father- or mother-in-law and son- or daughter-in-law, when the amount transmitted to any one person exceeds one hundred thousand dollars, a further duty—in addition to the rate hereinabove mentioned—shall be paid on the amount so passing, as follows:

Where the whole amount so passing to one person:

- (a) Exceeds one hundred thousand dollars, but does not exceed two hundred thousand dollars 1 p.c.
- (b) Exceeds two hundred thousand dollars, but does not exceed four hundred thousand dollars 1½ p.c.
- (c) Exceeds four hundred thousand dollars, but does not exceed six hundred thousand dollars 2 p.c.
- (d) Exceeds six hundred thousand dollars, but does not exceed eight hundred thousand dollars 2½ p.c.
- (e) Exceeds eight hundred thousand dollars 3 p.c.

2. Collateral Line.—In the collateral line:

- (a) If the property is transmitted to the brother or sister, or descendant of the brother or sister of the deceased:
 If the value of the property transmitted does not exceed ten thousand dollars 5 p.c.
 If it exceeds ten thousand dollars 5½ p.c.
- (b) If the property is transmitted to the brother or sister, or descendant of a brother or sister of the father or mother of the deceased:
 If the value of the property transmitted does not exceed ten thousand dollars 6 p.c.
 If it exceeds ten thousand dollars 6½ p.c.
- (c) If the property is transmitted to the brother or sister or descendant of a brother or sister of the grand-parents of the deceased:
 If the value of the property transmitted does not exceed ten thousand dollars 7 p.c.
 If it exceeds ten thousand dollars 7½ p.c.
- (d) If the property is transmitted to any other collateral within the heritable degrees:
 If the value of the property transmitted does not exceed ten thousand dollars 8 p.c.
 If it exceeds ten thousand dollars 9 p.c.
3. **Stranger:**—If the property is transmitted to a stranger 10 p.c.

Extra Duty if Transmission is to Collateral or Stranger.—

Provided that in the case of a transmission in the collateral line or to a stranger, where the amount passing to any one person exceeds fifty thousand dollars, a further duty—in addition to the rates hereinabove mentioned in clauses 2 and 3—shall be paid on the amount so passing, as follows:

Where the whole amount so passing to one person:

- (a) Exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars 1 p.c.
- (b) Exceeds one hundred thousand dollars, but does not exceed one hundred and fifty thousand dollars 1½ p.c.
- (c) Exceeds one hundred and fifty thousand dollars, but does not exceed two hundred thousand dollars 2 p.c.
- (d) Exceeds two hundred thousand dollars, but does not exceed two hundred and fifty thousand dollars. 2½ p.c.
- (e) Exceeds two hundred and fifty thousand dollars, but does not exceed three hundred thousand dollars 3 p.c.
- (f) Exceeds three hundred thousand dollars, but does not exceed three hundred and fifty thousand dollars 3½ p.c.
- (g) Exceeds three hundred and fifty thousand dollars but does not exceed four hundred thousand dollars. 4 p.c.
- (h) Exceeds four hundred thousand dollars, but does not exceed four hundred and fifty thousand dollars. 4½ p.c.
- (i) Exceeds four hundred and fifty thousand dollars .. 5 p.c.

“1387c. Debts Owing to Deceased Payable Outside the Province are Included.—All debts owing to the deceased at the time of his death, or which are payable by reason of his death, and which at the time of such death were payable outside the Province, are included in the moveable property taxable in virtue of this section.

"1387d. Deduction to be made Proportionately.—The debts and charges to be deducted as mentioned in the first paragraph of article 1387b, shall be such proportion of the debts and charges existing at the date of the death, other than the debts and charges to be deducted under article 1377, as shall equal the proportion which the value of the moveable property situated outside the Province bears to the total value of the whole of the property of the deceased situate outside the Province.

"1387e. 1. Policies Under R. S. 7378 Dutiable.—Life insurance policies, effected or appropriated under the provisions of article 7378, shall be dutiable in the same manner as any other moveable property.

2. Also Other Sums Due by Insurer Which Devolve by Gratuitous Title.—All other sums due by an insurer by reason of the death of an insured person, shall be considered for the purposes of this section, when they devolve by gratuitous title, as forming part of the property of such insured person, and shall be subject to succession duties in the same manner as other property.

"1387f. Certain Charitable Bequests not Dutiable.—No duty shall be leviable on property devised or bequeathed for religious, charitable or educational purposes, to be carried on by a corporation or person domiciled within the Province, but only to an amount not exceeding one thousand dollars in each case.

"1387g. Every Heir &c., is Liable for his own Share Only.—Every person to whom as heir, universal legatee, legatee by general or particular title, or donee under a gift in contemplation of death, moveable property situate outside the Province is transmitted, is personally liable for the duties due in respect of such property, and for no more.

By Whom Duty to be Paid in Certain Cases.—In the case of property transmitted in usufruct or with substitution, the tax shall be paid by the usufructuary or the institute, and shall not be exigible from any further beneficiary.

No Personal Liability in Certain Cases.—No notary, executor, trustee or administrator shall be personally liable for the duties imposed by this section. Nevertheless the executor, the trustees or the administrator may be required to pay such duties out of the property or money in his possession belonging to or owing to the beneficiaries, and if he fails so to do may be sued for the amount thereof, but only in his representative capacity, and any judgment rendered against him in such capacity shall be executed against such property or money only.

"1387h. Copy of Will to be Sent to Collector Within Certain Time After Decease.—Every heir, universal legatee, legatee by general or particular title, donee under a gift in contemplation of death, executor, trustee and administrator, or notary before whom a will or codicil to a will has been executed, shall, within thirty days after the death of the testator or intestate, forward to the collector of provincial revenue for the district wherein the testator died or the succession devolved, a copy of the testator's said will or codicil or of the said deed of gift.

2. Declaration as to Value of Estate.—Every heir, universal legatee, legatee by general or particular title, donee under a gift in contemplation of death, executor, trustee or administrator, shall,

within three months after the date of the death of the testator or intestate, transmit to such collector of provincial revenue a declaration under oath, setting forth:

(a) **Contents.**—The name, surname, residence, address and calling of the declarant and his relationship to the deceased, if any;

(b) The name and surname of the testator or intestate, and the place of the domicile of the testator or intestate at the time of his death;

(c) The description, situation and real value of all the property transmitted by the deceased;

(d) The amounts in detail of the debts and charges of the succession, with the names, surnames, residences and callings of all the creditors thereof;

(e) The names, surnames, residences, callings and relationship to the deceased (if any) of each and all the beneficiaries to which this section applies;

(f) The nature and value of the share of the declarant in the property of the succession to which this section applies, after deducting the debts and charges mentioned in article 1387*d* which are payable by him, or which affect the property composing such share; and, in so far as the same is known to him, the nature and value of the shares of each of the other beneficiaries to which this section applies, after making a like deduction as regards each of them.

Such declaration shall be in addition to and separate and distinct from the declaration to be made in virtue of article 1381.

Declaration by one of Parties Relieves the Others.—A declaration duly made by one of the persons mentioned in paragraph 2 of this article, if it contain all the information necessary for ascertaining the amounts of all the duties payable in virtue of this section, shall relieve all the others from the necessity of making such declaration.

3. Interim Declaration and Delay.—If, however, within the said three months, an interim declaration, under oath, is made by any of the beneficiaries, that it is impossible—within the said delay—to furnish the declaration mentioned in paragraph 2 of this article, the said collector may extend such delay for sixty days, and a further delay, not exceeding six months, may be granted by the Provincial Treasurer.

4. Statement of Amount Due by Each Beneficiary.—On receipt of any declaration or declarations mentioned in paragraph 2 of this article, the said collector shall cause to be prepared a statement of the amount of the duty to be paid by each of the beneficiaries mentioned in such declaration, and by the executor, trustee or administrator (if any), in his representative capacity.

5. Statement to be Forwarded to Each Beneficiary.—Suit if Amount not Paid.—The said collector shall forward to each beneficiary, executor, trustee or administrator, the statement which relates to him, by registered letter mailed to his address, and shall notify him to pay the amount of the duty mentioned therein within thirty days after the notice is sent; and if the amount is not then paid to him on the day fixed, the said collector may sue for the recovery thereof before any court of competent jurisdiction of his own district.

6. Transfers Invalid, &c., if Duties not Paid.—Penalty for Violation.—Subject to the provisions of article 1380, no transfer of the properties of any estate or succession shall be valid, nor shall any title vest in any person, if the taxes payable under this section have not been paid, and no executor, trustee, administrator, curator, heir, legatee or donee as aforesaid shall consent to any transfers or payments of legacies, unless the said duties have been paid, or unless a certificate has been delivered by the collector of provincial revenue to the effect that no duty is exigible. Any executor, trustee, administrator, curator, heir, legatee or donee as aforesaid violating the provisions of this paragraph is liable to a penalty equal to twice the amount of the duty.

7. Penalty if Declaration &c., not Made.—If any declaration so required, is not made within the prescribed delay, or within any extended delay that may have been granted, or if any false or incorrect statement is made in any such declaration, either as to the value or otherwise, every heir, legatee or donee as aforesaid so in default or offending shall be liable to a penalty equal to twice the amount of the duties which he would have had to pay if he had made a proper declaration within such delay, and every executor, trustee or administrator so in default or offending, shall be liable to a penalty of not more than one thousand dollars; and in default of the payment of such penalty in either case, the offender shall be liable to imprisonment for not more than one month, and the amount of the penalty may be levied out of his personal property.

8. Petition for Discovery of Books and Papers.—Affidavit in Support.—Order of Court.—The provincial treasurer may, in his discretion, and upon such notice to the parties interested as the court or judge may prescribe, present a petition to the Superior Court of the domicile of any person having in his possession or under his control, any books or papers of a succession to which this section applies, or to a judge thereof, praying for an order commanding such person to produce such books or papers before the court or judge, within such delay as the court or judge may fix, for the inspection of the provincial treasurer or of any person appointed by the latter for that purpose. Such petition shall be accompanied by an affidavit of the comptroller of provincial revenue, or of the proper collector of provincial revenue, setting forth that the deponent has reason to believe and does believe that the declaration made with respect to such succession under this article, has omitted or undervalued assets of the succession liable to duty, and that access to such books or papers has been refused him, and the court or judge, after summarily hearing the parties present shall, in its or his discretion, give or refuse the order.

Production of Books, &c., and Inspection of Same.—Upon such order having been duly served upon such person, the latter shall be bound, subject to all legal penalties in case of default so to do, to produce such books or papers as aforesaid; and upon the same having been so produced, the provincial treasurer or his representative, subject to the orders which the court or judge may give in that behalf, may take communication of such books or papers, and make copies of or extracts therefrom.

Costs.—The costs of such application and of the proceedings thereunder shall be in the discretion of the court or judge.

9. Interest on Past due Debts.—Legal interest is exigible upon all amounts payable to the Crown under this section, after four months from the date of the decease.

"1387*i*. Certain Provisions to Apply.—The provisions of articles 1384 to 1387*a* inclusive, shall apply to this section."

2. Application of the Act.—This Act shall apply to all future transmissions mentioned in section 1 thereof, and to all past transmissions in respect of which the taxes mentioned in the provisions repealed by the Act 4 George 5, chapter 9, have remained unpaid in whole or in part. Nevertheless the delays granted for the payment of any sum of money or for the performance of any duty required to be paid or performed in virtue of this Act, may be extended by the Provincial Treasurer, but such extension shall in no case exceed six months.

3. Coming into Force.—This Act shall come into force on the day of its sanction.

4 GEORGE V.

CHAPTER 11

An Act respecting certain duties imposed on successions.

[Assented to 19th February, 1914]

Preamble.—WHEREAS, on the 22nd day of November, 1913, in a cause wherein Charles S. Cotton and others were suppliants and appellants, and His Majesty, the King, in right of the Province of Quebec, was respondent, a judgment was rendered by the Judicial Committee of the Privy Council, in consequence of which doubts have arisen as to whether the taxes imposed by the Quebec Succession Duties Act, 6 Edward VII., chapter 11, then articles 1374 to 1387, both inclusive, of the Revised Statutes of Quebec, 1909, were direct taxes;

Whereas such doubts have arisen from the interpretation given to said Act, by the said Judicial Committee, to the effect that it imposed the whole of the duties leviable in respect of any succession, upon the person making the declaration mentioned in paragraph 1 of article 1191*g* of the Revised Statutes, 1888, then article 1380 of the Revised Statutes, 1909, which person should have recovered the amount so paid from the persons interested in the succession;

Whereas, according to this judgment, among the persons who might make the said declaration, and who, by making the same, would become liable for the said duties, might be, and generally was, the notary before whom the will of the deceased was executed;

Whereas, paragraph 1 of article 1191*g* of the Revised Statutes, 1888, then paragraph 1 of article 1380 of the Revised Statutes, 1909, expressly excluded the said notary from the class of persons who must make and forward the said declaration, and, therefore, the holding of the said Judicial Committee, was, to a large extent, based upon conditions which were non-existent;

Whereas, neither the said Act 6 Edward VII., chapter 11, nor any of the previous or subsequent Acts of the Legislature respecting succession duties, intended to impose or did impose the whole of the duties leviable in respect of a succession, upon the person mak-

ing the said declaration, but on the contrary, intended to tax and did tax, immediately, and without recourse to any other person, all beneficiaries under the said succession;

Whereas, the said holding appears to be based on the second sub-paragraph of paragraph 1 of article 1191*g* of the Revised Statutes, 1888 (then the second sub-paragraph of paragraph 1 of article 1380 of the Revised Statutes, 1909), reading as follows: "The declaration duly made by one of the above named persons shall relieve the others as regards such declaration," taken in connection with paragraph 4 of the said article, which enacted that on receipt of such declaration, a statement must be prepared of the amount of duties to be paid by "the declarant," and with paragraph 5 of the said article, which provided for a demand of payment upon the "declarant";

Whereas, the words: "The declaration duly made by one of the above named persons shall relieve the others as regards such declaration" were not in the first Act relating to succession duties (the Act 55-56 Victoria, chapter 17), which Act, however, contained the equivalent of the paragraphs 4 and 5 above mentioned; but were first enacted by section 2 of the Act 58 Victoria, chapter 16;

Whereas, before the coming into force of the Act last mentioned, each of the persons interested in a succession was obliged to make the said declaration, and was alone liable to pay the taxes imposed upon his share in the succession; the said taxes being therefore direct taxes;

Whereas, the said section 2 of the Act 58 Victoria, chapter 16, did not intend to change and did not change the nature of the said tax, or the persons by whom the same was payable; its sole object and effect being to prevent the useless duplication of documents containing the same information;

Whereas, even if a single declarant making the declaration in question, could be called upon to pay the whole of the taxes due in respect of the death, out of the assets of the succession, such payment would not be a payment by one person in the expectation that he would indemnify himself at the expense of other persons, but would be a payment by one person as the representative of, and out of the money of other persons;

Whereas, the persons who have paid succession duties before the coming into force of section 2 of the Act 58 Victoria, chapter 16, have no right to recover back the same on the ground that the duties so paid were not direct taxes; and whereas, to retain the moneys they have so paid, and to refund, on such a ground, the moneys subsequently paid by other persons in discharge of similar duties, would be to unjustly discriminate against the former;

Therefore, His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. Intent and Meaning of Acts re Succession Duties.—The intent and meaning of all the Acts of the Legislature imposing succession duties, was and is, that every person to whom property or any interest therein was transmitted owing to death, should pay to the Government directly, and without having a recourse against any other person, a tax calculated upon the value of the property so transmitted.

2. No right of Action for Recovery of Money Paid, on Certain Ground.—There shall be no right of action for the recovery of any money heretofore or hereafter paid to the Government

in respect of taxes or duties imposed by any Act of the Legislature relating to succession duties, for the reason only that the said taxes or duties were not direct taxes.

3. Application.—This Act shall not apply to pending or decided cases.

4. Coming into Force.—This Act shall come into force on the day of its sanction.

5 GEORGE V.

CHAPTER 24

An Act to amend the Revised Statutes, 1909, relating to the duties imposed on successions.

[Assented to 5th March, 1915]

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:—

1. R. S. 1377, am.—Article 1377 of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 9, section 1, is amended by adding thereto a new paragraph, as follows:

“In the same case, each legacy payable out of the mass of the estate shall be apportioned upon the said mass in the same proportion as the debts and charges are deducted therefrom.”

2. R. S. 1377a, Enacted.—The Revised Statutes, 1909, are amended by inserting therein, after article 1377 thereof, as enacted by the Act 4 Geo. V., chapter 9, section 1, a new article, as follows:

“1377a. Tax Payable if Part of Estate is Situated Outside the Province.—In case the property transmitted forms only part of an estate, the other part of which is actually situated without the province, no tax shall be exigible if the total value of the estate, after deducting the debts and charges existing at the time of the death, does not exceed \$15,000.00; if such total value does exceed \$15,000.00, the tax on the value of the property actually situated in the Province shall be that enacted by article 1375, exclusive of the first sub-paragraph a, of paragraph 1 thereof.”

3. R. S. 1379, a.m.—Article 1379 of the Revised Statutes, 1909, as enacted by Act 4, George V., chapter 9, section 1, is amended by adding thereto a new paragraph, as follows:

Deduction to be Made Once Only.—“The amount not exceeding one thousand dollars to be deducted under this article, when it is payable out of the mass of the estate, situated partly within and partly without the Province, must be deducted once only, whether under this article or under article 1387f, and in the same manner and the same proportion as the debts and charges.”

4. R. S. 1381, am.—Article 1381 of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 9, section 1, and as amended by the Act 5 George V., chapter 25, section 3, is further amended:

(a) By inserting therein, after the word: "legacies," in the seventh line of paragraph 7 thereof, the words: "and no person or corporation, or transfer agent for a corporation, shall accept or register in his or its books any transfer of shares.";

(b) By inserting therein, after the words: "as aforesaid," in the eleventh line of the said paragraph 7 thereof, the words: "or any person, corporation or transfer agent,".

5. R. S. 1387d, am.—Article 1387d of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 10, section 1, is amended by adding thereto two new paragraphs, as follows:

Legacies, how Apportioned in Certain Cases.—"When the moveable property transmitted, and which is locally situated outside the Province, forms only part of an estate, the other part of which is situated inside the Province, each legacy payable out of the mass of the estate must be apportioned upon the mass of such estate in the same proportion as the debts and charges are to be deducted therefrom.

Tax Exigible in Certain Cases.—In case the moveable property transmitted, and situated outside the Province, forms only part of an estate, the other part of which is actually situated within the Province, no tax is exigible if the total value of the estate, after deducting the debts and charges existing at the time of the death, does not exceed \$15,000.00; if such total value does exceed \$15,000.00, the tax on the value of the moveable property actually situated without the Province shall be that enacted by article 1387b, exclusive of the first sub-paragraph a of paragraph 1 thereof."

6. R. S. 1387f, am.—Article 1387f of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 10, section 1, is amended by adding thereto a new paragraph as follows:

Deduction to be Made Once Only.—"The amount not exceeding one thousand dollars to be deducted under this article, when it is payable out of the mass of the estate, situated partly within and partly without the Province, must be deducted once only, whether under this article or under article 1379, and in the same manner and the same proportion as the debts and charges."

7. R. S. 1387h, am.—Article 1387h of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 10, section 1, and as amended by the Act 5 George V., chapter 25, section 7, is further amended:

(a) By inserting therein, after the word: "legacies" in the seventh line of paragraph 6 thereof, the words: "and no person or corporation or transfer agent for a corporation, shall accept or register in his or its books any transfer of shares.";

(b) By inserting therein, after the words: "as aforesaid," in the twelfth line of the said paragraph 6 thereof, the words: "or any person, corporation or transfer agent,".

8. Coming into Force.—This Act shall come into force on the day of its sanction.

5 GEORGE V.

CHAPTER 25

An Act to amend the acts relating to the duties imposed on successions, and to impose duties upon certain disposition of property by gratuitous title.

[Assented to 5th March, 1915]

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:—

1. R. S. 1376a, Enacted.—The Revised Statutes, 1909, are amended by inserting therein, after article 1376 thereof, as enacted by the Act 4 George V., chapter 9, section 1, a new article, as follows:

"1376a. Certain Transmissions Inter Vivos Deemed to be made Owing to Death.—Exceptions.—For the purposes of this section, the ownership, usufruct or enjoyment of any property shall be held to be transmitted owing to death, and the value of such property shall be liable to payment of duties, whenever there has been a disposition thereof, by gratuitous title, in any manner whatsoever, and when such disposition has taken effect less than three years before the death of the person who has made it, save in the case of:

(a) Any donation *inter vivos* in a marriage contract; or

(b) Any donation *inter vivos* to any one donee of moveable or immoveable property, when the total amount given does not exceed one thousand dollars.

Validity not Affected by Non-Payment of Duties.—The validity of a donation falling within the scope of this article, and of any subsequent transfer or transmission of the property donated, shall not be affected by the non-payment of the duties imposed by this section."

2. R. S. 1380, am.—Article 1380 of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 9, section 1, is amended by inserting therein, after the word: "death," in the third line thereof, the words: "or under a disposition such as mentioned in article 1376a,".

3. R. S. 1381, am.—Article 1381 of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 9, section 1, and as amended by the Act 5 George V., chapter 24, section 4, is further amended:

(a) By inserting therein, after the words: "of death," in the third line of paragraph 1 thereof, the words: "donee under a disposition such as mentioned in article 1376a,";

(b) By inserting therein after the words: "of death," in the second line of paragraph 2 thereof, the words: "donee under a disposition such as mentioned in article 1376a,";

(c) By inserting therein after the word "will," in the second line of paragraph 3 thereof, the words: "or other document containing the disposition such as mentioned in article 1376a,".

4. R. S. 1383, am.—Article 1383 of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 9, section 1, is amended:

(a) By inserting therein, after the word: "wills," in the fourth line thereof, the word "donations;"

(b) By inserting therein, after the word "will," in the eleventh line thereof, the word "donation."

5. R. S. 1387*da*, Enacted.—The Revised Statutes, 1909, are amended by inserting therein, after article 1387*d* thereof, as enacted by the Act 4 George V., chapter 10, section 1, and as amended by the Act 5 George V., chapter 24, section 5, a new article, as follows:

"1387*da*. Certain Transmissions Inter Vivos Deemed to be Made Owing to Death.—Exceptions.—For the purposes of this section, any transmission within the Province by a person domiciled therein of moveable property locally situated outside the Province, shall be held to be a transmission owing to the death of such person, and shall be liable to the payment of duties, whenever there has been a disposition thereof, by gratuitous title, in any manner whatsoever, and when such disposition has taken effect less than three years before the death of the person who has made it, save in the case of:

(a) Any donation *inter vivos* in a marriage contract; or

(b) Any donation *inter vivos* to any one donee of moveable or immovable property, when the total amount given does not exceed one thousand dollars.

Validity not Affected by Non-Payment of Duties.—The validity of a donation falling within the scope of this article, and of any subsequent transfer or transmission of the property so donated, shall not be affected by the non-payment of the duties imposed by this section."

6. R. S. 1387*g*, am.—Article 1387*g* of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 10, section 1, is amended by inserting therein, after the word "death," in the third line thereof, the words: "or under a disposition such as mentioned in article 1387*da*,".

7. R. S. 1387*h*, am.—Article 1387*h* of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 10, section 1, and as amended by the Act 5 George V., chapter 24, section 7, is further amended:

(a) By inserting therein, after the word "death," in the third line of paragraph 1 thereof, the words: "donee under a disposition such as mentioned in article 1387*da*,";

(b) By inserting therein, after the word "death," in the third line of paragraph 2 thereof, the words: "donee under a disposition such as mentioned in article 1387*da*,".

8. Not to Apply to Certain Donations or Exemptions.—This Act shall not affect donations made before its coming into force, nor shall it affect the exemptions created by the Acts which it amends.

9. Coming into Force.—This Act shall come into force on the day of its sanction.

7 GEORGE V.

CHAPTER 30

An Act to amend the Revised Statutes, 1909, relating to Succession Duties.

[Assented to 22nd December, 1916]

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:—

1. R. S. 1375, am.—Article 1375 of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 9, section 1, is amended:

(a) By replacing the word: “belle-fille” in third line and in the thirty-eighth line of paragraph 1 of the French version, by the word: “bru”;

(b) By replacing paragraph 2 thereof by the following:

“2. Duties in Collateral Line.—In the collateral line:

(a) If the succession devolves to the brother or sister, or descendant of the brother or sister of the deceased:

If the value of the property transmitted does not exceed fifty thousand dollars 5½ p.c.

If it exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars 9 p.c.

If it exceeds one hundred thousand dollars 11 p.c.

(b) If the succession devolves to the brother or sister, or descendant of a brother or sister of the father or mother of the deceased:

If the value of the property transmitted does not exceed fifty thousand dollars 6½ p.c.

If it exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars 10 p.c.

If it exceeds one hundred thousand dollars.....12½ p.c.

(c) If the succession devolves to any other collateral within the heritable degrees:

If the value of the property transmitted does not exceed fifty thousand dollars 9 p.c.

If it exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars 12 p.c.

If it exceeds one hundred thousand dollars15 p.c.”;

(c) **When Succession Devolves to a Stranger.**—By replacing the words: “3. If the succession devolves to a stranger....10 p.c.”, in the first line of paragraph 3 thereof, by the following:

“3. If the succession devolves to a stranger:

If the value of the property transmitted does not exceed fifty thousand dollars 10 p.c.

If it exceeds fifty thousand dollars, but does not exceed one million dollars 15 p.c.

If it exceeds one million dollars 20 p.c.”

2. R. S. 1375a, Enacted.—The Revised Statutes, 1909, are amended by inserting therein, after article 1375, as enacted by the

Act 4 George V., chapter 9, section 1, a new article 1375a, as follows:

"1375a. Value on Which Rate to be Fixed.—The value of that part of the estate situated outside the Province shall be included for the purpose of fixing the rate of duty imposed under this section."

3. R. S. 1381, Par. 9, Replaced.—Paragraph 9 of article 1381 of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 9, section 1, and amended by the Acts 5 George V., chapter 24, section 4, and 5 George V., chapter 25, section 3, is replaced by the following:

"9. Commission may be Appointed to Investigate Property of Succession.—Whenever the Provincial Treasurer deems it necessary, he may appoint one or more commissioners to hold an inquiry regarding any property forming part of a succession or a donation *inter vivos* to which this section applies, as to whether such property has been irregularly omitted from the declaration, or the true value has not been mentioned in the declaration, or it has not been valued at the ordinary market value, or regarding any other matter arising from the administration of this twentieth section.

Report.—The commissioner or commissioners appointed under this article are bound to make a report to the Provincial Treasurer of the result of their inquiry, and they shall have the powers mentioned in, and shall be subject to the obligations imposed by articles 585, 588, 589, 591, 592, 593, 596 and 597."

4. R. S. 1387b, am.—Article 1387b of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 10, section 1, is amended:

(a) By replacing the word "belle-fille," in the third line and in the thirty-seventh line of paragraph 1 of the French version, by the word: "bru";

(b) By replacing paragraph 2 thereof by the following:

"2. Duties in Collateral Line.—In the collateral line:

(a) If the property is transmitted to the brother or sister, or descendant of the brother or sister of the deceased:

If the property transmitted does not exceed fifty thousand dollars 5½ p.c.

If it exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars 9 p.c.

If it exceeds one hundred thousand dollars 11 p.c.

(b) If the property is transmitted to the brother or sister, or descendant of a brother or sister of the father or mother of the deceased:

If the value of the property transmitted does not exceed fifty thousand dollars 6½ p.c.

If it exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars 10 p.c.

If it exceeds one hundred thousand dollars 12 p.c.

(c) If the property is transmitted to any other collateral within the heritable degrees:

If the value of the property does not exceed fifty thousand dollars 9 p.c.

If it exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars 12 p.c.

If it exceeds one hundred thousand dollars 15 p.c.

(c) By replacing the words: "3. If the property is transmitted to a stranger..10 p.c.," in the first line of paragraph 3 thereof, by the following:

"3. When Property is Transmitted to a Stranger.—If the property is transmitted to a stranger:

If the value of the property transmitted does not exceed fifty thousand dollars	10 p.c.
If it exceeds fifty thousand dollars, but does not exceed one million dollars	15 p.c.
If it exceeds one million dollars	20 p.c."

5. R. S. 1387c, am.—Article 1387c of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 10, section 1, is amended by adding thereto the following paragraph, to wit:

Value on Which Rate to be Fixed.—"The value of the moveable and immoveable property situated in the Province shall be included for the purpose of fixing the rate of duty imposed under this section."

6. R. S. 1387h, Par. 8, Replaced.—Paragraph 8 of article 1387h of the Revised Statutes, 1909, as enacted by the Act 4 George V., chapter 10, section 1, and amended by the Acts 5 George V., chapter 24, section 7, and 5 George V., chapter 25, section 7, is replaced by the following:

"8. Commission may be Appointed to Investigate Property of Succession.—Whenever the Provincial Treasurer deems it necessary, he may appoint one or more commissioners to hold an inquiry regarding any property forming part of a succession or a donation *inter vivos* to which this section applies, as to whether such property has been irregularly omitted from the declaration, or the true value has not been mentioned in the declaration, or it has not been valued at the ordinary market value, or regarding any other matter arising from the administration of this section XXa.

The commissioner or commissioners appointed under this article shall be bound to make a report to the Provincial Treasurer of the result of their inquiry; and they shall have the powers mentioned in, and shall be subject to the obligations imposed by articles 585, 588, 589, 591, 592, 593, 596 and 597."

7. R. S. 1387j, Enacted.—The following section is inserted in the Revised Statutes, 1909, after section XXa of chapter fifth of title fourth thereof, as enacted by the Act 4 George V., chapter 10, section 1, and amended by the Acts 5 George V., chapter 24, sections 5, 6, and 7, and 5 George V., chapter 25, sections 5, 6, and 7, to wit:

"SECTION XXb.

"ALLOWANCE TO BE MADE ON CERTAIN SUCCESSION DUTIES.

"1387j. Allowance on Certain Succession Duties.—When it is shown, to the satisfaction of the Provincial Treasurer, that in any part of the British Dominions other than the Province of Quebec, or in any foreign country, any succession duty whatever is levied on account of any property that is also subject to succession duty according to the law of this Province, he may then make, for the duty so paid, an allowance from the duties payable in the Province with respect to the same property.

Proviso.—Such allowance, however, may be made only if the Lieutenant-Governor-in-Council has extended the provisions of this article to such British Dominion or such foreign country, after an understanding has been arrived at that similar treatment will be accorded by such British Dominion or foreign country to the Province of Quebec.

The Lieutenant-Governor-in-Council may amend or revoke any order-in-council made under these provisions."

8. Interpretation of Amendments.—The amendments made by paragraph *a* and section 1 and paragraph *a* of section 4 of this Act to the French version of the Quebec Succession Duties Act, must not be interpreted as meaning that the word "belle-fille," as heretofore used in the amended Acts, had a meaning different from that of the word "bru," which is substituted therefor by this Act.

9. Coming into Force.—This Act shall come into force on the day of its sanction.

PROVINCE OF ONTARIO

SUCCESSION DUTY ACT.

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PROVINCE OF ONTARIO BEING

Rev. Statutes of Ontario, 1914, chapter 24 as amended by 4 George V., chapter 10, 5 George V., chapter 7 and 6 George V., chapter 7 and Rules and Regulations made thereunder.

An Act respecting the payment of Succession Duty.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Short Title.—This Act may be cited as “The Succession Duty Act.” 9 Edw. VII., c. 12, s. 1.

2. Interpretation.—In this Act:—

(a) “**Aggregate Value.**”—“Aggregate value” shall mean the fair market value of the property after the debts, encumbrances and other allowances authorized by section 4 are deducted therefrom, and for the purposes of determining the aggregate value and the rate of duty payable the value of property situate out of Ontario shall be included;

In Re Lee, C. A. Ont., 1909, O. L. R., 1909, vol. xviii, p. 550. “Where the deceased died on June 24th, 1904, and the gross value of his estate was over \$200,000, but the net value, after deducting debts, encumbrances, and charges, was under \$100,000:—

Held, that the estate was liable to a succession duty at the rate of five per cent. on the net value, under R. S. O., 1897, cap. 24, as amended by 1 Edw. VII., cap. 8, sec. 3; and that the later statute, 5 Edw. VII., cap. 6, under which the duty would only be two per cent., could not be given retrospective operation, while the statute 7 Edw. VII., cap. 10, notwithstanding sec. 2 thereof, did not apply to the case or affect the matter.”

Attorney-General for Ontario vs. Lee et al:—O. L. R. (1905), vol. 9, p. 9. In establishing the “aggregate value” of the property of a deceased person under the Succession Duty Act, R. S. O., 1897, cap. 24, as amended by 62 Vic. (2), cap. 9, and 1 Edw. VII., cap. 8, the value of the land of the deceased, where such land is incum-

bered or mortgaged, is to be regarded, and not merely the value of deceased's equity of redemption therein.

This holding was confirmed in Appeal, O. L. R. (1905), vol. 10, p. 79.

Ross vs. the Queen, 32 O. R., p. 143, and O. L. R. (1901), p. 487. The Court of Appeals of Ontario held that debts must first be deducted in determining the "aggregate value." Hence the amendment 1 Edw. VII., cap. 8, sec. 3, and the present definition.

(b) **"Beneficial Interest"—"Dutiable Value."**—"Beneficial interest" and "dutiable value" shall mean the fair market value of the property after the debts, encumbrances, and other allowances and exemptions authorized by this Act are deducted therefrom.

Attorney-General vs. Newman, et al., O. L. R. (1901), 511.

(c) **"Child."**—"Child" shall include any lawful child of the deceased or any lineal descendant of such child born in lawful wedlock or any person adopted while under the age of twelve years by the deceased as his child or any infant to whom the deceased for not less than five years immediately preceding his death stood in *loco parentis* or any lineal descendant of such adopted child or infant as aforesaid born in lawful wedlock;

(d) **"Executor."**—"Executor" shall include administrator;

(e) **"Interest in Expectancy."**—"Interest in expectancy" shall include an estate, income or interest in remainder or reversion and any other future interest whether vested or contingent but shall not include a reversion expectant on the determination of a lease;

(f) **"Passing on the Death."**—"Passing on the death" shall mean passing either immediately on the death or after an interval, either certainly, or contingently, and either originally or by way of substitutive limitation, whether the deceased was at the time of his death domiciled in Ontario or elsewhere;

(g) **"Property."**—"Property" shall include real and personal property of every description and every estate and interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives;

Re Estate of George Roach, 1 O. L. R. (1905), p. 208.

(h) **"Treasurer."**—"Treasurer" shall mean the Treasurer of Ontario. 9 Edw. VII., c. 12, s. 2.

3. What Dispositions and Devolutions of Property shall Confer Successions.—Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death happening after the 1st day of July, 1892, whether the death has heretofore or shall hereafter happen, of any person domiciled in Ontario, either immediately or after any interval, either certainly or contingently, and either originally, or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person

so domiciled to any other person in possession or expectancy shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "succession," and the term "successor" shall denote the person so entitled. 9 Edw. VII., c. 12, s. 3.

4. Allowances Made in Computing Dutiable Value.—In determining the dutiable value of property or the value of a beneficial interest in property the fair market value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses, debts and encumbrances and Surrogate Court fees (not including solicitor's charges); and any debt or encumbrance for which an allowance is made shall be deducted from the value of the land or other subject of property liable thereto; but an allowance shall not be made:—

(a) **No Allowance to be made for Certain Debts and Expenses of Administration.**—For any debts incurred by the deceased or encumbrances created by a disposition made by him unless such debts or encumbrances were created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and to take effect out of his estate; nor

(b) For any debt in respect whereof there is a right to reimbursement from any other estate or person unless such reimbursement cannot be obtained; nor

(c) More than once for the same debt or encumbrance charged upon the different portions of the estate; nor

(d) Save as aforesaid, for the expense of the administration of the estate or the execution of any trust created by the will of the deceased or by any instrument made by him in his lifetime. 9 Edw. VII., c. 12, s. 4.

Re Bolster, O. L. R., 1905, vol. 10, p. 591 (Divisional Court). A testator made numerous specific pecuniary bequests, and gave the residue of his estate to persons other than the residuary legatees. He directed his executors to pay his just debts and funeral and testamentary expenses;

Held, that succession duties do not come within the description either of a debt or part of the testamentary expenses; and that the specific legacies, not being specially exonerated by the will, were not to be exonerated from their proportion of the succession duties payable upon the whole of the estate, at the expense of the residuary legatees.

This holding approves of the holdings in *Kennedy vs. Protestant Orphans' Home* (1894), 25 O. R. 235; *Manning vs. Robinson* (1898), 29 O. R., 483, see sec. 15; *Re Holland* (1902), 3 O. L. R., 406, see sec. 15; see also *Re Mackey*, O. L. R. (1903), vol. 6, p. 292, see sec. 18.

5. Allowance in Respect of Duty Paid Elsewhere.—Where in respect of any succession in Ontario any estate, legacy, or succession duty is payable in any part of the British Dominions other than Ontario, or in a foreign country by the law of that

country, in respect of which no allowance of duty is made under section 9, and the Treasurer is satisfied that by reason of such succession any duty is payable there in respect of it, he may allow the amount of that duty to be deducted from the value of the succession in Ontario. 10 Edw. VII., c. 6, s. 2, *part*.

See *in re Renfrew*, 29 O. R., 566, cited at sec. 14; *Ross vs. the Queen*, O. L. R., 1901, p. 487, see sec. 1 (a); *Attorney General vs. Stuart*, O. L. R., 1901, vol. ii., p. 403, see sec. 15, sub-sec. 3; *Attorney General Ontario vs. Woodruff et al.*, O. L. R., 1908, vol. xv., 416. See sec. 7 and judgment of Privy Council, reported in L. R., 1908, p. 508.

6. Exemptions from Succession Duty.—No duty shall be leviable,—

- (a) On any estate the aggregate value of which does not exceed \$5,000.
- (b) On property passing by will, intestacy or otherwise to or for the benefit of the grandfather, grandmother, father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased where the aggregate value of the property of the deceased does not exceed \$25,000.
- (c) Where the whole value of any property passing to any one person does not exceed \$300, unless such person is a member of a class and the whole value of the property passing to such class does exceed \$600. 5 Geo. V., c. 7, s. 2.
- (d) On property devised or bequeathed for religious, charitable, or educational purposes to be carried out in Ontario or by a corporation or a person resident in Ontario or on the amount of any unpaid subscription for any like purpose made by any person in his lifetime to any corporation or person mentioned in this subsection for which his estate is liable.
- (e) On any bond, debenture or debenture stock issued by a corporation having its head office in Ontario, transferable on a register at any place out of Ontario and which is owned by a person not domiciled at the time of his death in Ontario. 4 Geo. V., c. 10, s. 2, *part*.

7. Property Subject to Duty.—(1) The following property as well as all other property subject to succession duty upon a succession shall be subject to duty at the rates hereinafter imposed.

(a) **Property in Ontario.**—All property situate in Ontario and any income therefrom passing on the death of any person, whether the deceased was at the time of his death domiciled in Ontario or elsewhere;

Attorney General for Ontario vs. Woodruff et al., O. L. R., 1908, vol. xv., p. 416. The Plaintiff claimed for the Crown succession duty upon moneys and securities, the subjects of two settlements made respectively in 1894 and 1903 by a testator who died in October, 1904, domiciled in Ontario.

In 1894 the testator had a quantity of debentures of municipal corporations in the United States, which had always been retained and managed for him in the United States by his agents there. The documents had been kept by the testator in a leased vault in New York. The testator procured each of his four sons to execute a trust deed in favour of a New York trust company whereby these debentures were transferred (in four portions) to the company in trust to manage, invest, etc., and to pay over the income to each son during his life, and upon his death in trust for his children. The testator went to New York, obtained the debentures from the vault, separated them into four parcels, and delivered them with the trust deeds to the company. The interest was from time to time remitted by the company to the sons, and the sons transferred the cheques thereof to the testator, who gave each of the sons \$750 half-yearly, and retained the balances.

Held, Meredith, J. A., dissenting, That the effect of this first settlement, made in the State of New York and of property then locally there, where it had ever since remained, the testator having completely parted with the legal title to the property, which thereupon became at once, and remained, vested in the trustees residing there, where the trusts were and were intended to be carried into execution, was to give the property settled a permanent foreign *situs*, to remove it completely from the control of the law of the domicile of the testator, and to render it in future subject only to the law of the State of New York; and for this reason, and for the additional reason that the Succession Duty Act, as it stood when that settlement was made, did not include or affect such a settlement, the property settled was not subject to succession duty.

The settlement of 1902 comprised certain cash on hand in New York and other property of a character similar to that in the previous settlement, locally situated wholly in the United States. The debentures were kept in the same vault, of which the testator had the key. When about to make this settlement, the testator wrote to his New York agents, authorizing them to transfer his account from his name to the names of three of his sons, adding, "I wish to have my affairs in good shape, as I have not been feeling very well of late," and shortly afterwards executed a document whereby he purported to transfer to his four sons the cash and debentures, in trust for his wife, and after her death to be divided equally between the four sons, subject to a charge for the education of two grandchildren. This settlement was made at a city in Ontario, where the testator, his wife, and three of his sons resided. The agents transferred the account to the names of the three sons, and notified them and the testator that they had done so; and it was arranged that access to the vault in which the debentures were kept could be secured only by the three sons and the wife, and thereafter the annual receipts for the rent of the vault were given in the name of the wife. No remittance of income to Ontario was ever made by the New York agents under the second settlement, nor any other definite action of any kind taken by the trustees to realize or get in the trust property in the lifetime of the testator.

Held: That the property settled was subject to succession duty.

Judgment of *Falconbridge, C. J. K. B.*, affirmed as to the first settlement and reversed as to the second.

Privy Council: The judgment of the Court of Appeals, so far as it had modified the judgments of the lower court, was reversed.

and that of Chief Justice Falconbridge was restored and approved in full.

Alfred S. Woodruff et al vs. Attorney General for Ontario, L. R., 1908, p. 508. "It is *ultra vires* the Legislature of Ontario to tax property not within the province. See B. N. A. Act, 1687, sec. 92, sub-sec. 2:—

Held, accordingly, that the Succession Duty Act (R. S. O., 1897, cap. 24), does not include within its scope moveable properties locally situated outside the province of Ontario, which it was alleged that the testator, a domiciled inhabitant of the province, had transferred in his lifetime with intent that the transfers should only take effect after his death.

Blackwood vs. Reg. (1898), 8 App. Cas. 82, followed.

For a discussion as to what property is included in the expression "property situate in Ontario," see

Attorney General vs. Newman et al., 31 O. R. 340; O. L. R. (1901), vol. 1, p. 511, and cases there cited.

Held: "Payment of duty under the Succession Duty Act is based upon administration; and duty is payable upon any property which can properly be administered only in Ontario.

Payment of non-negotiable deposit receipts, payable after notice at branches in Ontario of Canadian banks, held by a foreigner at the time of his death in the foreign country, cannot be enforced except by his personal representative in Ontario, and succession duty is payable there in respect of the amount covered by them."

(b) **Local Situs of Specialty.**—debts and sums of money due and owing from persons in Ontario to any deceased person at the time of his death on obligation or other specialty shall be property of the deceased situate in Ontario, without regard to the place where the obligation or specialty shall be at the time of the death of the deceased. 9 Edw. VII., c. 10, s. 7, *part*; 4 Geo. V., c. 10, s. 3.

Attorney General for Ontario vs. Woodruff et al. O. L. R., 1908, Vol. 15, p. 416 and L. R. 1908, p. 508. (See sec. 7, subs. 1.).

See *Attorney General vs. Newman*, *loc. cit.*, and cases there cited. *In re Renfrew* 29. Q. R. 566 cited at sec. 14.

Re Fisher, 7 O. W. N. 754. Specialty debts—domicile of testator.

(2) **Property Deemed to Pass on the Death.**—Property passing on the death of the deceased shall be deemed to include for all purposes of this Act the following property:—

(a) **Property Transferred in Contemplation of Death.**—Any property, or income therefrom voluntarily transferred by deed, grant, bargain, sale or gift made in general contemplation of the death of the grantor, bargainor, vendor, or donor, and with or without regard to the imminence of such death, or made or intended to take effect in possession or enjoyment after such death to any person in trust or otherwise, or the effect of which is that any person becomes beneficially entitled in possession or expectancy to such property or income. 9 Edw. VII., c. 10, s. *part*; 4 Geo. V., c. 10, s. 4.

Attorney General Ontario vs. Woodruff et al.

(b) Donations Mortis Causa, and Gifts Inter Vivos.—

Any property taken as a *donatio mortis causa*, or taken under a disposition operating or purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise made since the first day of July, 1892, or taken under any gift whenever made, of which property actual and *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or of any benefit to him whether voluntary or by contract or otherwise, except as hereinafter mentioned. 4 Geo. V., c. 10, s. 5.

Attorney General for Ontario vs. Brown et al., O. L. R. (1903), vol. 5, p. 167. "The aggregate value of the estate of an intestate was \$12,877, and of this \$7,540 passed to the hands of his niece by virtue of an agreement between them, given effect to by a *donatio mortis causa*, as established in *Brown vs. Toronto General Trusts Corporation* (1900), 32 O. R., p. 319:—

Held, that the \$7,540 was not dutiable under the Succession Duty Act, R. S. O., 1897, cap. 24, and amendments, the transfer from the intestate to his niece not being a voluntary one, but made in pursuance of a contractual obligation for value; and the niece not being estopped, by the form of the judgment in her action against the Toronto General Trusts Corporation, from setting up in this action, brought on behalf of the crown, to recover succession duty, that the transfer was not a gift, but the implementing of a contract.

Held, also, that the \$7,540 did not pass by survivorship within the meaning of sec. 4 (d) of R. S. O., 1897, cap. 24."

Attorney General Ontario vs. Woodruff et al., O. L. R., 1908, vol. xv., p. 416, see holding cited under section 7.

Re Estate of George Roach, O. L. R. (1905), vol. 10, p. 208. The testator had more than a year before his death, and while in comparatively good health, conveyed the homestead to his two daughters in fee, the conveyance being at once registered. No change of possession took place, the testator continuing to live in the house until his death.

Held, that this conveyance could not be deemed to have been made in contemplation of death.

For a discussion of the *donatio mortis causa*,—

Beake vs. Beake, L. R., 13 Eq. 489.

(c) Property Vested Jointly with Interest to Survivor.—

Any property which a person having been absolutely entitled thereto, has caused, or may cause to be transferred to or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person, including also any purchase or investment, effected by the person who was absolutely entitled to the property either by himself alone or in concert, or by arrangement with any other person;

Re Gibson Estate (1914), 26 O. W. R. 640; 6 O. W. N.

Where there was a gift of money from deceased to her son, who put the money into the bank with some of his own, on a joint ac-

count, the amount to go to the survivor upon the death of either, and the son invested a large part in mortgages, the mother being informed thereof and consenting thereto. Sup. Ct., Ont. (2nd App. Div.) held, that this was a distinct departure from the original intention, that there was no property belonging to the mother at her death referable to this joint account, and that no trust was fixed upon the securities into which the money went; therefore was not liable to succession duties.

(d) **Property Passing Under Settlement, etc.**—Any property, passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not, as between the settlor and any other person, made by deed or other instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof for life, or any other period determinable by reference to death, is reserved, either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself, or to reclaim the absolute interest in such property, or the proceeds of sale thereof, or to otherwise resettle the same or any part thereof;

Attorney General for Ontario vs. Woodruff et al., O. L. R. 1908, p. 416 (C. A.), Vol. xv.; and L. R. 1908, p. 508 (See sec. 7, sub-s. 1).

(e) **Annuities, Insurance, etc.**—Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(f) **Policies of Insurance.**—Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of any existing or future donee, whether nominee or assignee, or for any person who may become a donee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit;

(g) **Property Over Which Decedent Had Power of Disposal.**—Any property of which the person dying was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would if he were *sui juris* enable him to dispose of the property as he thinks fit, whether the power is exercisable by instrument *inter vivos* or by will or both, including the powers exercisable by a tenant in tail, whether in possession or not, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as a mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether con-

currence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose;

(h) **Dower and Curtesy.**—Any estate in dower or by the curtesy in any land of the person so dying of which the wife or husband of the deceased becomes entitled on the decease of such person. 9 Edw. VII., c. 10, s. 7, *part*.

(3) **Exceptions as to Certain Gifts Inter Vivos.**—Notwithstanding anything herein contained, no duty shall be payable in respect of any property.

(a) **To Child or Parent to \$20,000.**—Given absolutely more than three years before the death of the donor to a child, son-in-law or daughter-in-law, or to the father or mother of the donor which does not exceed in the aggregate to persons named in this subsection the sum of \$20,000 in value or amount. 4 Geo. V., c. 10, s. 6, *part*; 5 Geo. V., c. 7, s. 3.

(b) **Ordinary Expenditure.**—Given by the donor where the gift is proved to have been absolute and to have taken effect in the lifetime of the donor and to have been part of his ordinary and normal expenditure and to have been reasonable, having regard to the amount of his income and the circumstances under which the gift was made,

of which property actual and *bona fide* possession and enjoyment shall have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him, whether voluntarily or by contract or otherwise.

Exceptions.—nor in respect of property

(c) **Gifts up to \$500.**—Given by the donor in his lifetime and not exceeding in value the sum of \$500 in the case of any one donee, or

(d) **Transfer for Good Consideration.**—Actually and *bona fide* transferred for a consideration in money or money's worth paid to the transferor for his own use and benefit, except to the extent, if any, to which the value of the property transferred exceeds that of the consideration so paid. 4 Geo. V., c. 10, s. 6, *part*.

Attorney General for Ontario vs. Brown et al., O. L. R. (1903), vol. 5, p. 167 cited under sec. 7, sub-sec. 3 (b).

8. Amount of Duty.—**Rev. Stat. c. 62.**—Subject to the exceptions mentioned in sections 6 and 7 there shall be levied and paid for the purpose of raising a revenue for Provincial purposes in respect of any succession or on property passing on the death according to the dutiable value the following duties over and above the fees paid under *The Surrogate Courts Act*—

(1) **Where Property Passes to Grandparents, etc., and Exceeds \$25,000.**—Where the aggregate value of the property exceeds \$25,000, and any property passes in manner hereinbefore men-

tioned, either in whole or in part to or for the benefit of the grandfather, grandmother, father, mother, husband, wife, child, son-in-law or daughter-in-law of the deceased, the same or so much thereof as so passes, shall be subject to a duty at the rate and on the scale as follows:

Where the aggregate value

- (a) Exceeds \$25,000 and does not exceed \$50,000, 1 per cent.
- (a) (a) Exceeds \$50,000 and does not exceed \$75,000, 2 per cent.
- (b) Exceeds \$75,000 and does not exceed \$100,000, 3 per cent.
- (c) Exceeds \$100,000 and does not exceed \$150,000, 4½ per cent.
- (d) Exceeds \$150,000 and does not exceed \$300,000, 5½ per cent.
- (e) Exceeds \$300,000 and does not exceed \$500,000, 6½ per cent.
- (f) Exceeds \$500,000 and does not exceed \$750,000, 7½ per cent.
- (g) Exceeds \$750,000 and does not exceed \$1,000,000, 8½ per cent.
- (h) Exceeds \$1,000,000, 10 per cent. 4 Geo. V., c. 10, s. 7; 5 Geo. V., c. 7, s. 4.

In Re Lee (C. A., 1909, Ont.), O. L. R., 1909, vol. xviii., p. 550.

Held: "Where the deceased died on June 24th, 1904, and the gross value of his estate was over \$200,000, but the net value, after deducting debts, encumbrances, and charges, was under \$100,000:

"That the estate was liable to a succession duty at the rate of 5 per cent. on the net value, under R. S. O. (1897), cap. 24, as amended by 1 Edw. VII., cap. 8, sec. 3; and that the latter statute, 5 Edw. VII., cap. 6, under which the duty would only be two per cent., could not be given a retrospective operation, while the statute 7 Edw. VII., cap. 10, notwithstanding sec. 2 thereof, did not apply to the case or affect the matter."

(2) Additional Duty Where Share Exceeds \$100,000.—

Where the aggregate value of the property exceeds \$100,000 and the value of the property passing in manner hereinbefore mentioned to any one of the persons mentioned in the next preceding subsection exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the rates in the next preceding subsection mentioned as follows:—

Where the whole amount so passing to one person

- (a) Exceeds \$100,000 and does not exceed \$200,000 1 per cent.
- (b) Exceeds \$200,000 and does not exceed \$400,000, 1½ per cent.
- (c) Exceeds \$400,000 and does not exceed \$600,000, 2 per cent.
- (d) Exceeds \$600,000 and does not exceed \$800,000, 2½ per cent.
- (e) Exceeds \$800,000 and does not exceed \$1,000,000, 3 per cent.
- (f) Exceeds \$1,000,000 and does not exceed \$1,200,000, 4 per cent.
- (g) Exceeds \$1,200,000, 5 per cent. 4 Geo. V., c. 10, s. 7.

(3) Rate of Duty Where Property Passes to Certain Relatives.—Where the aggregate value of the property exceeds \$5,000 and any property passes in manner hereinbefore mentioned, either in whole or in part to or for the benefit of any lineal ancestor of the deceased, except the grandfather, grandmother, father and

mother, or to any brother or sister of the deceased or to any descendant of such brother or sister or to a brother or sister of the father or mother of the deceased or to any descendant of such last mentioned brother or sister, the same or so much thereof as so passes shall be subject to a duty at the rate of and on the scale as follows:—

Where the aggregate value

- (a) Exceeds \$5,000 and does not exceed \$50,000, 5 per cent.
- (b) Exceeds \$50,000 and does not exceed \$100,000, 10 per cent.
- (c) Exceeds \$100,000, 12½ per cent. 4 Geo. V., c. 10, s. 7; 5 Geo. V., c. 7, s. 4.

(4) Additional Duty Where Share Exceeds \$50,000.—

Where the aggregate value of the property exceeds \$50,000 and the value of the property passing in manner hereinbefore mentioned to any one of the persons mentioned in the next preceding subsection, except the grandfather, grandmother, father and mother exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the duty in the next preceding subsection mentioned as follows:—

Where the whole amount so passing to one person

- (a) Exceeds \$50,000 and does not exceed \$100,000, 1 per cent.
- (b) Exceeds \$100,000 and does not exceed \$150,000, 1½ per cent.
- (c) Exceeds \$150,000 and does not exceed \$200,000, 2 per cent.
- (d) Exceeds \$200,000 and does not exceed \$250,000, 2½ per cent.
- (e) Exceeds \$250,000 and does not exceed \$300,000, 3 per cent.
- (f) Exceeds \$300,000 and does not exceed \$350,000, 3½ per cent.
- (g) Exceeds \$350,000 and does not exceed \$400,000, 4 per cent.
- (h) Exceeds \$400,000 and does not exceed \$450,000, 4½ per cent.
- (i) Exceeds \$450,000, 5 per cent.

(5) Additional Duty, How Fixed Where Deceased Dies Domiciled Out of Ontario.—

The additional duty provided for by subsections 2 and 4 shall be payable on the property in Ontario, where the deceased dies domiciled elsewhere than in Ontario, but for the purpose of fixing the rate of such duty the beneficial interest in property out of Ontario passing to the successor or other person on the same death shall be added to the value of the property in Ontario, and nothing in this Act shall be construed to impose any duty, directly or otherwise, on property out of Ontario owned by any deceased person so domiciled. 4 Geo. V., c. 10, s. 7.

(6) Rate Where Property Passes to Other Persons.—Where the aggregate value of the property exceeds \$5,000 and any property passes in manner hereinbefore mentioned, either in whole or in part, to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above mentioned or to

or for the benefit of any stranger in blood to the deceased, the same or so much thereof as so passes shall be subject to a duty at the rate and on the scale as follows:—

Where the aggregate value

(a) Exceeds \$5,000 and does not exceed \$10,000, 6 per cent.

(a) (a) Exceeds \$10,000 and does not exceed \$50,000, 10 per cent.

(b) Exceeds \$50,000 and does not exceed \$1,000,000, 15 per cent.

(c) Exceeds \$1,000,000, 20 per cent. 4 Geo. V., c. 10, s. 7;

5 Geo. V., c. 7, s. 4.

9. Allowance for Duty Paid Elsewhere on Same Death.—

Proviso.—Where the Treasurer is satisfied that in any part of the British Dominions other than Ontario, or in any foreign country to which this section applies, any estate, legacy or succession duty is paid by reason of the succession in Ontario, an allowance for the duty so paid shall be made from the amount payable to this Province with respect to the same property; provided that any such allowance shall be made only as to such part of the British Dominions or as to such foreign country to which the Lieutenant-Governor-in-Council shall have extended the provisions of this section. Provided also that the Lieutenant-Governor-in-Council may revoke any Order-in-Council made under this section. 10 Edw. VII., c. 6, s. 2, *part*.

[*Note.*—For list of Orders in Council extending the provisions of this section, see Appendix "C".]

10. Foreign Executors, etc., Not to Transfer Stock Until Duty Paid.—

No foreign executor shall assign or transfer any bond, debenture, stock or share of any bank or other corporation whatsoever, having its head office in Ontario, standing in the name of the deceased person, or in trust for him, until the duty, if any, is paid or security is given as required by section 11, and any such bank or corporation allowing a transfer of any debenture, bond, stock or share contrary to this section shall be liable for such duty. 9 Edw. VII., c. 12, s. 10.

11. (1) Filing Inventory, etc., Liability of Heir, etc.—

Every heir, legatee, donee or other successor and every person to whom property passes for any beneficial interest in possession or in expectancy shall be liable for the duty upon so much of the property as so passes to him, and shall within six months after the death of the deceased or such later time as may be allowed by the Treasurer, make and file with the Registrar of the Surrogate Court of the County or District in which the deceased had a fixed place of abode or in which the property or any part thereof is situate, a full, true and correct statement under oath showing:—

(a) A full inventory in detail of all the property of the deceased person and the fair market value thereof on the date of his death;

(b) The several persons to whom the same passes, their places

of residence and the degrees of relationship, if any, in which they stand to the deceased.

(2) **Where One Files Statement Others to be Relieved.**—Where any one of the persons mentioned in subsection 1 has made and filed the statement required by that subsection, the Treasurer may dispense with the making of the statement by any other of them.

(3) **Duty and Liability of Executors, etc.**—Before the issue of letters probate or letters of administration to the estate of a deceased person a statement under oath similar to that required by subsection 1 shall be made by the executor or administrator applying therefor and filed with the Surrogate Registrar of the County or District in which the application is made, and if the duty has not been paid by the successors or security to the satisfaction of the Treasurer given, the applicant shall in consideration of the grant applied for being made furnish a bond in a penal sum to be fixed by the Treasurer, executed by himself and two sureties, to be approved by the Registrar, conditioned for the due performance of his duty under this Act as to accounting for the succession duty to His Majesty for which the property of the deceased is chargeable in default of payment being made by the persons liable therefor.

(4) **Accepting Lump Sum of Security.**—The Treasurer may accept a sufficient sum as security for the due payment of any duty in lieu of or in addition to any other security, and he may in such case allow to the depositor interest thereon at a rate not exceeding three per cent. per annum upon so much thereof as from time to time exceeds the amount of duty which has become payable under this Act. 4 Geo. V., c. 10, s. 11.

(5) **Property Not Disclosed on Application for Probate, etc.**—If at any time it shall be discovered that any property was not disclosed upon the grant of letters probate, or of administration, or the filing of the account, the person acting in the administration of such property and the person who is liable for the duty payable under this Act shall pay to the Treasurer the amount which, with the duty (if any) previously payable or paid on such property, shall be sufficient to cover the duty chargeable according to the true value thereof at the rates fixed by this Act, together with interest thereon, and shall at the same time pay to the Treasurer as a penalty a further duty of twenty-five per cent. of the duty chargeable on the value of the property not disclosed, and shall also, within two months after the discovery of the omission, deliver to the Surrogate Registrar an affidavit or account setting forth the property so not disclosed, and the value thereof, in default of which he shall incur a penalty of \$10 for each day during which the default continues. 9 Edw. VII., c. 12, s. 11 (4).

Ross vs. the Queen. O. L. R. (1901), vol. 1, p. 487. Where executors erroneously and in ignorance of the existence of claims over-

valued the estate and paid succession duty for which the estate would not have been liable had the amount of such claims been deducted therefrom, they were held entitled to recover back from the Crown the amount of the duty wrongly paid.

12. (1) Proceedings When Treasurer Not Satisfied With Valuation.—The Surrogate Judge of the county in which the property or any part thereof subject to duty is situate shall, at the instance of the Treasurer and upon such notice by personal or substitutional service to the executor or such interested parties as he by order directs, enquire into the correctness of the inventory, and as to the value so sworn to, and determine what property should be included in such inventory and the value of the same, fix and settle the amounts of the debts and other allowances and exemptions, and assess the cash value of every annuity, term of years, life estate, income or other estate, and of every interest in expectancy as provided by this Act, and shall at the time and place mentioned in the notice or any other time and place named by him value all property at the fair market value, and hear and determine all questions relative to the liability of property, the amount of duty and the successor and other persons liable therefor. 4 Geo. V., c. 10, s. 12; 6 Geo. V., c. 7, s. 2.

(2) Powers of Judge.—The Surrogate Judge shall have all the powers of a Judge of the County Court at the trial of any action and the power to compel discovery, the production of books, papers and documents and he may with the consent of the Official Guardian appoint for the purposes of this Act a guardian of any infant who has no guardian.

(3) Enforcement of Judgment.—The judgment of the Surrogate Judge shall have the like force and effect and be enforceable in the same manner as a judgment of the County Court. 9 Edw. VII., c. 10, s. 12 (1-3).

(4) Judge May Direct Appraisement of Property by Sheriff.—In lieu of or in addition to evidence of valuation of property the Surrogate Judge may in the first instance or at any time before judgment, and at the request of the Treasurer shall, issue a direction to the Sheriff of the county where any property is situate in respect to which duty is payable, or to some other competent person, to make an appraisement of the property mentioned in the inventory or any part thereof, or of any property wrongfully omitted. 10 Edw. VII., c. 6, s. 2. *part.*

(5) Appraisement at Fair Market Value.—When so directed the sheriff shall forthwith appraise the property mentioned in the inventory, or any part thereof, as directed by the Surrogate Judge, or any property wrongfully omitted, at its fair market value at the date of death, or at the time provided in section 16, as the case may be, and make a report in writing to the Surrogate Judge of his appraisement and of such other facts as he may deem proper.

See *in re Roach*, O. G. R. (1905), vol. 10, p. 208.

(6) **Sheriff's Fees.**—The sheriff shall be paid the following fees for services performed under this Act:—

\$1 for every hour up to five hours;

\$2 for every hour in important or difficult cases;

In no case to exceed \$10 per diem;

His actual and necessary travelling expenses. 9 Edw. VII., c. 10, s. 12 (5), (6).

(7) **Examination of Persons Having Dutiable Property in Possession.**—In case the Treasurer is of the opinion that any person or corporation is in possession of any property of a deceased person which is or may be dutiable under this Act, or that any person or corporation is in possession of knowledge or information in reference to the property of any deceased person which is or may be dutiable under this Act, or in case the Treasurer for any other reason deems it advisable to examine any person in or about the enforcement of the provisions of this Act, the Surrogate Court Judge of the County in which the property or any part thereof is supposed to be situated, shall, at the instance of the Treasurer, order such person or any officer of such corporation to attend before him and submit to examination on oath touching the property of such deceased person, or touching any property in his knowledge, which is, or may be, dutiable under this Act, or otherwise, as may seem just, and may direct the persons to be examined to make production upon oath of any books, papers, or other writings or documents, relating to the matters in issue which may be in the possession of such person or of any corporation. 6 Geo. V., c. 7, s. 3.

13. Valuation of Annuities and Limited Estates.—The value of every annuity, term of years, life estate, income or other estate and of every interest in expectancy, in respect of which duty is payable under this Act, shall for the purposes of this Act be determined by the rule, method and standards of mortality and of value which are employed by the Superintendent of Insurance in ascertaining the value of policies of life insurance and annuities for the determination of the liabilities of life insurance companies, save that the rate of interest to be taken for all purposes of computation under this section shall be four per cent. per annum; and the Superintendent of Insurance shall on the application of any Surrogate Judge determine the value of any annuity, term of years, life estate, income or other estate or of any interest in expectancy upon the facts contained in any such application and certify the same to the Surrogate Judge, and his certificate shall be conclusive as to the matters dealt with therein. 9 Edw. VII., c. 12, s. 13.

14. (1) Appeal from Surrogate Judge.—Proviso.—The Treasurer, or any other person interested, may within thirty days from the date of the judgment of the Surrogate Judge appeal to a Dis-

sional Court, whose decision shall be final, but no appeal shall lie unless that portion of the property or of the debts and other allowances and exemptions in respect of which such appeal is taken, or all combined, exceeds in value or amount \$10,000 according to such judgment.

(2) **Costs.**—The costs of all such proceedings shall be in the discretion of the Court or Judge and shall be on the County Court scale, except the costs of an appeal, which shall be according to the tariff applicable to proceedings in the Supreme Court. 9 Edw. VII., c. 12, s. 14.

Re Estate of George Roach. O. L. R. (1905), vol. 10, p. 208.

"From the appraisal and assessment of a testator's estate by the sheriff, the Provincial Treasurer appealed under sec. 7 of the Succession Duty Act, R. S. O. (1897), cap. 24, to the Surrogate Judge, the notice of appeal stating that he appealed on the following, amongst other grounds, the grounds stated being as to the sheriff not including in the appraisal the value of the homestead property, and the household goods valued at \$7,680 and \$1,000 respectively. The testator had, more than a year before his death, and while in comparatively good health, conveyed the homestead to his two daughters in fee, the conveyance being at once registered. No change of possession, however, took place, the testator continuing to live in the house until his death. The Surrogate Judge, on the appeal, fixed the value of the estate at \$197,152.27, refusing to include the homestead property, but including the value of the household goods:—

"Held, that the Provincial Treasurer came within the meaning of 'any person,' etc., contained in sec. 9 of the Act so as to have the right of appeal; and that such appeal was not limited to the grounds expressly stated, the whole appraisal being open to appeal; and the appeal being for an amount in excess of \$10,000, there was a further appeal to a judge in court.

"Held, also, that the conveyance to the daughters of the homestead property could not be deemed to have been made in contemplation of death within sec. 4, sub-sec. (b); but that it came within the sub-sec. (c) of that section, which read in connection with the interpretation section, sec. 2, whereby a 'property' includes real as well as personal estate, and was subject to duty."

See also, Re Renfrew. 29 O. R. 565.

Held, "The Judge of a Surrogate Court has jurisdiction to determine whether a particular estate of which probate or administration is sought, is liable or not to pay succession duty, and the amount of such duty, his decision being subject to appeal.

"Where a deceased person had his domicile, prior to and at the time of his death, in another Province, and the value of his property in Ontario is under \$100,000, although his whole estate, including property in the Province of his domicile exceeds \$100,000, and his whole estate in this Province is by his will devised and bequeathed to his wife and children, the property in this Province is not liable to pay succession duty. Judgment of the judge of the Surrogate Court of York affirmed."

The Attorney General for Ontario vs. Toronto General Trusts Corporation. O. L. R. (1903), vol. 5, p. 607. "In litigations under the Succession Duties' Act, express power is given to the High Court

to deal with the costs thereof; and where therefore an estate had paid, or where ready to pay, all the duties which could properly be claimed against it, it was held entitled to the costs of opposing a claim for higher duties."

15. (1) Duty Payable Within 18 Months from Death of Deceased.—Proviso.—Payment of Duty on Annuity.—The duty imposed by this Act, unless otherwise herein provided, shall be due at the death of the deceased, and payable within eighteen months thereafter, and if the same, or any part thereof, is paid within that period, no interest shall be charged or collected thereon, but if not so paid, interest at the rate of five per centum per annum from the death of the deceased shall be charged and collected upon the amount remaining from time to time unpaid, and such duty, or so much thereof as remains unpaid, with interest thereon, shall be and remain a lien upon the property in respect of which it is payable until paid. Provided that the duty chargeable upon any legacy given by way of annuity, whether for life or otherwise, may be paid in four equal consecutive annual instalments, the first of which shall be paid before the falling due of the first year's annuity and each of the three others within the same period in each of the next succeeding three years, and for non-payment when due interest shall be collected from the date of the maturity of each instalment until paid, and if the annuitant dies before the expiration of the four years, the balance of the duties shall be payable by the estate or fund out of which the annuity is charged or derived. 6 Geo. V., c. 7, s. 4.

Re Holland, O. L. R. (1902), vol. 3, p. 406.

"A direction in a will to executors to pay debts, funeral and testamentary expenses does not operate so as to make succession duty payable under R. S. O. (1897), cap. 24, a charge on the residue and to exonerate the legacies from payment thereof."

Manning vs. Robinson (1898), 20 O. R. 483, followed.

"The rule that executors are not bound to pay pecuniary legacies before the expiration of a year from the testator's death does not prevent them, where no time is fixed for payment, and there is sufficient to pay debts, legacies and charges, from paying a legacy forthwith, and in this case they were held entitled to allow the amount of a legacy to be set off against a mortgage due by the legatee to the estate, the mortgage giving the privilege of payment wholly or partially at any time."

Bethune vs. R. (1912), 21 O. W. R. 559; 3 O. W. N. 941; 26 O. L. R. 117.

Action by executors to recover payment to Provincial Treasurer—Mistake—Succession Duty Act, s. 11.

"Testator gave an annuity to Mrs. Anderson. The Succession Duty Act, s. 11, provides "that the duty payable upon any legacy given by way of annuity was to be paid in 4 equal consecutive annual instalments, and that in the event of the annuitant dying before the expiration of the first 4 years, payment only of the instalments which fell due before the death of the annuitant should be required."

The executors paid the whole of the succession duty at once and obtained a release thereof. Mrs. Anderson died before receiving 4 annual instalments and the executors brought an action, by way of petition of right, against the Provincial Treasurer to recover the amount of succession duty paid in excess to what would have been required had they paid according to annual payments.

Falconbridge, C. J. K. B., held, that petitioners could not recover. That there was no payment under mistake of fact, the only mistake (if any) related to future events, the death of the annuitant.

(a) **Extension of Time by Order-in-Council.**—The Lieutenant-Governor-in-Council, upon proof to his satisfaction that payment of the duty within the time limited by this subsection would be unduly onerous, may extend the time for the payment to such date and upon such terms as may be deemed proper.

(b) **Interest Allowed for Prepayment.**—For payment before the time provided for in this section the Treasurer may allow to the person accountable for the duty, interest at a rate not exceeding three per centum per annum upon the amount so paid. 10 Edw. VII., c. 6, s. 2, *part*.

(2) **Time for Payment of Duty Where Income Accumulated.**—Where the whole or any part of the income or interest of any property is directed to be accumulated for any period for the benefit of any person or persons or class to whom or to any of whom at the expiration of such period such property passes, or income, or interest, becomes payable, such property shall be deemed for the purpose of this Act an interest in possession, passing at the death of the deceased, and the duty thereon shall be payable within eighteen months thereafter.

(3) **Where Person has General Power of Appointment.**—Property passing upon the death in respect to which any person is given such a general power to appoint, as is mentioned in clause (g) of subsection 2 of section 7, shall be liable to duty and the duty thereon shall be payable in the same manner and at the same time as if the property itself had been given to the donee of the power. 4 Geo. V., c. 10, s. 8.

Attorney General vs. Mitchell & Gibbon, L. R. 6 Q. B. D. 558.

Attorney General vs. Stuart, O. L. R. (1901), vol. 2, p. 403.

The testator died in England on the 25th February, 1901, possessed of and entitled to lands in Ontario. He left a will and four codicils by which his sister was named as sole executrix and trustee, and was bequeathed the income of his whole estate for life and given a general power of appointment by will in respect of the whole estate. The sister died on the 2nd March, 1901, without having proved the will and codicils and without having taken upon herself any of the burdens thereof. By her will, made in 1873, she gave all her estate to the defendant, who obtained from the High Court of Justice in England letters of administration to the estates of the testator and his sister with the wills annexed. He then applied to a Surrogate Court in Ontario for ancillary letters of

administration to both estates and for legal authority to deal with the lands in Ontario:—

Held, that, having regard to the provisions of clause (g) of sec. 4 of the Succession Duty Act, R. S. O. (1897), ch. 24 (inserted by sec. 11 of 62 Vic. (2), ch. 9), the lands in Ontario were subject to two duties, as having devolved under both wills.

Held, also, that the provisions of sub-sec. 2 of sec. 6 of 1 Edw. VII., ch. 8 (o), were not declaratory of the previous law, nor retro-active, and having become law since the two deaths, did not apply to this case.

Attorney-General vs. Theobald (1890), 2 Q. B. D., 557 distinguished.

(4) **Certificate of Discharge to be Given by Provincial Treasurer.**—When the duty or any part thereof has been paid or secured to the satisfaction of the Treasurer he shall, if required by the person accounting for the duty, give a certificate to that effect which shall discharge from any further claim for such duty the property mentioned in the certificate; provided the Treasurer shall not be bound to grant such certificate until the expiration of one year from the death of the deceased.

(5) **Certificate not a Discharge in Case of Fraud, etc.**—**Except as to bona fide Purchaser.**—Such certificate shall not discharge any person or property from the duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property, in respect of which duty has been already accounted for; provided that a certificate purporting to be a discharge of the whole duty payable in respect of any property in the hands of a *bona fide* purchaser for valuable consideration without notice. 9 Edw. VII., c. 12, s. 15 (2-5).

16. (1) Time for Payment of Duty on Interest in Expectancy.—Where the dutiable property includes any interest in expectancy the duty on such interest may be paid within the eighteen months limited by subsection 1 of section 15, and when so paid the duty shall be on the value of such interest ascertained as provided herein as at the death of the deceased.

(2) **Payment After Time Limited.**—With the consent in writing of the Treasurer, the duty may be paid after the time so limited and before such interest comes into possession; but if such consent is given the duty shall then be on a value not less in any event than the value of such interest in expectancy ascertained as provided herein at the date when the duty is paid; and no deduction shall be made by reason of duty paid or payable on any prior estate, income or interest.

(3) **Payment Forthwith When Interest in Expectancy Falls into Possession.**—The duty on any interest in expectancy,

if not sooner paid, shall be payable forthwith when such interest comes into possession, in which case the duty shall be on the value ascertained as provided herein as at the date of coming into possession; and no deduction shall be made by reason of duty paid or payable on any prior estate, income or interest; and if such duty is not so paid, interest at the rate of five per cent. per annum shall be charged and collected thereon from the date when such interest in expectancy came into possession.

The Attorney General for Ontario vs. The Toronto General Trusts Corporation, O. L. R. (1903), vol. 5, p. 216.

"A testator by his will devised his estate to a corporate trustee upon trust to collect the income and apply it in their discretion for the benefit of his children and grandchildren for the period of twenty-one years after his death; and to pay over to the beneficiaries the whole income without accumulations, for the period between the end of the twenty-one years and the death of the last surviving child, when the corpus was to be divided:—

"*Held*, that there was a plainly marked out period in the future not sooner than twenty-one years, when the corpus of the estate was to be divided; with a prior interest for life or years according to the event in fact, during which the trustee standing in *loco parentis* was entitled to the present income of the property until the time arrived for the division of the corpus, and that the income only was presently liable to the payment of succession duty."

(4) Where no Person Presently Beneficially Entitled.—

Subject to the provisions of subsection 2 of section 15, where any property so passes that no person is beneficially entitled to the present enjoyment of the income or any part thereof for any term of years, or other period, whether certain or uncertain, the duty shall be payable on the present value of such income or part thereof for such term or period computed as provided by section 13 and shall be payable within eighteen months after the death of the deceased.

(5) Commutation of Duty.—Notwithstanding that the duty may not be payable under this section until the time when the right of possession or actual enjoyment accrues, an executor or person who has the custody or control of the property may, with the consent of the Treasurer, commute the duty which would or might, but for the commutation, become payable in respect of such interest in expectancy, for a certain sum to be presently payable, and for determining that sum the Treasurer shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to, and the rate and amount of such duty and interest; and on the receipt of such sum the Treasurer shall give a certificate of discharge from such duty.

(6) Interest in Expectancy to be Charged With Duty Paid.—Where the duty on any interest in expectancy has been commuted and paid under the provisions of this section before such interest in expectancy falls into possession the duty so paid

shall be charged on such interest in expectancy and shall be repaid with interest at the rate of four per cent. per annum to the person who has paid the same by the person entitled to such interest in expectancy at the time when such interest comes into possession.

(7) Composition by Treasurer for Duty Payable in Certain Cases.—Where it appears to the Treasurer, that, by reason of the number of deaths on which property has passed or of the complicated or contingent nature of the interests of different persons in property passing on the death, it is difficult to ascertain exactly the rate or amount of duty payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Treasurer on the application of any person accountable for any duty thereon, and upon his furnishing all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may, by way of composition for all or any duty payable in respect of the property or interest and the various interests therein or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper and may accept payment of the sum so assessed in full discharge of all claims for duty in respect of such property or interest and shall give a certificate of discharge accordingly. 9 Edw. VII., c. 12, s. 16.

17. Extension of Time for the Payment of Duty.—Upon the application of any person liable for the payment of the duty the Surrogate Judge may from time to time, on notice to the Treasurer, and for just cause shown, make upon such terms as he may deem proper an order extending the time fixed by this Act for payment thereof for any period, in the aggregate not exceeding one year, or with the consent of the Treasurer for a longer period, but, unless the Judge otherwise orders, the duty shall nevertheless bear interest at the rate of five per centum per annum from the day upon which such duty might have been paid without interest. 9 Edw. VII., c. 12, s. 17.

18. (1) Non-Personal Liability of Executors not to Transfer Property Until Duty Paid.—No executor or trustee shall in the first instance be personally liable to pay the duty on any property to which any legatee, donee or other successor is beneficially entitled, but an executor, trustee or other person in whom any interest in any property so passing to any legatee, donee or other successor, or the management thereof is at any time vested, shall not transfer such property to the person so entitled without deducting therefrom the duty for which such successor is liable and any executor, trustee or other person who transfers such property without deducting the duty therefrom shall pay to the Treasurer the amount of such duty in respect of such property and interest thereon together with an additional rate of fifty per cent. of the duty

payable in respect of such property and such combined amounts shall be recoverable against the executor, trustee or other person so chargeable.

(2) **Money Retained by Executor to be Paid Over to Treasurer.**— Every sum of money retained by an executor or trustee or paid into his hands for the duty on any property shall be paid by him forthwith to the Treasurer or as he may direct.

(3) **Rev. Stat. c. 22.**— Such executor and trustee shall for the purpose of the collection and payment of any duty which under the provisions of this Act it is his duty to collect and pay over to the Treasurer be deemed to be an officer for the collection thereof within the meaning of the *Public Revenue Act*. 4 Geo. V., c. 10, s. 13.

(4) **Persons Liable to Duty may Raise Same by Sale, etc.**— Any person who may be required to pay the duty in respect of any property which has come into his possession, or is vested in him or is under his control shall, for the purpose of paying such duty or raising the amount of the duty when already paid, have power to raise the amount of such duty and any interest and expense properly paid or incurred by him in respect thereof by sale, mortgage or lease of so much of the property as may be necessary for such purpose. 5 Geo. V., c. 7, s. 5.

Re Mackey, O. L. R. (1903), vol. 6, p. 292.

"A testator possessed of a considerable number (more than five) of \$1,000 debentures, bearing interest at four per cent. of a certain city, both at the time of making a codicil to his will and at the time of his death, by the codicil devised to each of two devisees 'one debenture of' (the city) 'for the sum of \$1,000 bearing interest at four per cent. per annum,' and directed that if I should deliver over any of the said debentures in my lifetime to any of the above legatees, such delivery shall be considered and taken as a satisfaction of the legacy of the person to whom it is so delivered." He had in previous clauses bequeathed to each of the five named persons one debenture for the sum of \$1,000 bearing interest at four per cent.:—

Held, that the legacies to the two legatees were not specific legacies; and that even if they had been, the legatees were not entitled to receive them free of succession duty which the executors should either deduct or collect the duty before payment.

See also Re Holland, O. L. R. (1902), vol. 3, p. 406; *Kennedy et al vs. Protestant Orphans' Home et al*, 25 O. R., p. 235; *Manning et al vs. Robinson et al*, 29 O. R., p. 483.

19. Refunding Duty Upon Subsequent Payment of Debts.—

Where any debts shall be proven against the estate of a deceased person, after the payment of legacies or distribution of property from which the duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the

executor, if such duty has not been paid to the Treasurer, or by the Treasurer if it has been so paid. 9 Edw. VII., c. 12, s. 19.

20. Fees of Judges and Registrars.—Rev. Stat. c. 62.—The Judges and Registrars of the several Surrogate Courts and solicitors practising therein shall be entitled to take for the performance of duties and services under this Act, similar fees to those payable to them for the like services under and by virtue of *The Surrogate Courts Act* and the Surrogate Court rules. 9 Edw. VII., c. 12, s. 20.

21. (1) Recovery of Succession Duties by Action.—Any duty payable under this Act shall be recoverable with full costs as a debt due to His Majesty from any person liable therefor by action in or on summary application to any court of competent jurisdiction.

(2) Matters to be Determined by Supreme Court in Action.—The Supreme Court shall also have jurisdiction to determine what property is liable to duty under this Act, the amount of such duty and the time or times when the same is payable, and may itself or through any referee exercise any of the powers conferred upon any officer or person by the said sections.

(3) Action may be Brought Before Time for Payment of Duty.—An action may be brought for any of the purposes in this Act mentioned, notwithstanding the time for the payment of the duty has not arrived, subject to the discretion of the court as to costs.

(4) Production of Documents, Examination of Witnesses, etc.—In every such action His Majesty's Attorney-General shall have the same right, either before or after the trial, to require the production of documents, to examine parties or witnesses, or to take such other proceedings in aid of the action as a plaintiff has in an ordinary action, 19 Edw. VII., c. 12, s. 21.

22. Caution.—Rev. Stat. c. 126.—Where duty is claimed in respect of any land, or money secured by mortgage, or charge upon land, the Treasurer may cause to be registered in the proper registry office, or in the proper office of land titles, if the land is registered under the Land Titles Act, a caution claiming duty in respect of such land, mortgage, or charge by reason of the death of the deceased, and the land, mortgage or charge, shall upon such registration be subject to the lien of the Crown for duty, but nothing herein contained shall affect the rights of the Crown to a lien independently of the caution. 9 Edw. VII., c. 12, s. 22.

23. Lieutenant-Governor-in-Council may Make Regulations.—The Lieutenant-Governor-in-Council may make rules and regulations for carrying into effect the provisions of this Act, and

such rules and regulations shall be laid before the Assembly forthwith, if in session at the date of such rules and regulations, and if not then in session such rules and regulations shall be laid before the Assembly within the first seven days of the session next after the same are made. 9 Edw. VII., c. 12, s. 23.

24. Declaration as to Application of Act.—Except as to the rate of duty and as to the liability for duty of any property transferred *inter vivos* the *Succession Duty Act* as amended by this Act shall be deemed to be and to declare the law relating to succession duty since the first day of July, 1892, save as to any action or reference heretofore determined in any court, or as to any estate upon which the duty has been fully paid and satisfied. 4 Geo. V., c. 10, s. 9.

25. (1) Appointment of Commissioner to Inquire into Estate.—The Treasurer may appoint a Commissioner or Commissioners to:—

- (a) Ascertain and inquire into what property, if any, is subject to succession duty under the terms of this Act; the fair market value of such property, the amount of duty payable upon such property, and the persons liable therefor;
- (b) Fix and settle the amount of the debts and other allowances and exemptions and assess the cash value of every annuity, term of lease, term of years, life estate, income or other estate, and of every interest in expectancy as provided by this Act;
- (c) Make inquiries as to any property transferred *inter vivos* or wrongfully omitted from any inventory filed; and
- (d) Generally make inquiry as to any matter or thing arising under this Act in connection with the estate of any deceased persons.

(2) **Notice to Parties.**—The Commissioner shall direct that notice be given by personal service or otherwise to the executor or such interested parties as he may think proper.

(3) **Powers of Commissioner.—Examination for Discovery.**—The Commissioner shall have all the powers of a Judge of the Supreme Court of Ontario at the trial of any action and all the powers which may be conferred upon a Commissioner under *The Public Inquiries Act*, and in addition thereto may, either at or previous to the hearing, make such order for the attendance and examination of any person or the officer or officers of any corporation for discovery or otherwise as he may deem expedient and may direct the persons to be examined to make production upon oath of any books, papers or other writings or documents which may be in the possession of such person or of any corporation.

(4) **Taking Evidence de Bene Esse or by Commission.**—Where the Treasurer or any person interested desires to produce

for use before the Commissioner the evidence of any person to be taken *de bene esse* or to be taken out of Ontario, an order may be made for the examination of such person or for the issue of a Commission in the like circumstances and with the like effect as a similar order may be made in an action.

(5) **Evidence to be Taken Down.**—The evidence of the witnesses taken before such Commissioner shall be taken down in writing and shall, at the request of either party, be transmitted by the Commissioner to the Central office at Osgoode Hall.

(6) **Appointment of Guardian for Infant Parties.**—A Commissioner may, with the consent of the Official Guardian, appoint for the purpose of this Act, a guardian of any infant who has no guardian.

(7) **Costs.**—The costs of proceedings shall be paid as directed by the Commissioner.

(8) **Filing Report of Commission.**—The report of the Commissioner may be filed in the Central Office of the Supreme Court of Ontario at Osgoode Hall, in the City of Toronto.

(9) **Report to Become a Judgment.**—Upon the report being so filed, it shall become a judgment of the Supreme Court of Ontario, and may be enforced in the same manner and by the like processes as if the judgment had been made by a Judge of the Supreme Court at the trial of an action.

(10) **Entry of Judgment.**—The judgment shall be entered in the same manner as a judgment of the court at the trial.

(11) **Appeal to Appellate Division.**—Either the Treasurer or any person interested may appeal from the said judgment to the Appellate Division of the Supreme Court of Ontario, but there shall be no further or other appeal.

(12) **Rules of Procedure.**—Rules of Court for the better carrying out of the purposes of this Act and the regulation of practice thereunder, including the practice of any appeal, may be made by any authority to whom is committed the power of making Rules of Court; but until such rules are made the practice shall be governed by the rules of the Supreme Court of Ontario. 6 Geo. V., c. 7, s. 5.

26. Remission of Duty in Cases of Persons Killed in the War.—Where any person dies from wounds inflicted, accident occurring or disease contracted, within twelve months before death while in the active military or naval service of His Majesty, whether in Canada or abroad, the Treasurer may, if he thinks fit, remit the whole or any part of the duty chargeable in respect of property passing upon the death of the deceased to the wife, husband, child, son-in-law or daughter-in-law of the deceased. 5 Geo. V., c. 7, s. 6, *part.*

APPENDIX A.

RULES AND REGULATIONS.

MADE BY ORDER OF HIS HONOUR THE LIEUTENANT-GOVERNOR-IN-COUNCIL
BEARING DATE THE TWENTY-SEVENTH DAY OF MAY, A.D. 1914,
FOR CARRYING INTO EFFECT THE SUCCESSION DUTY ACT.

1. Every heir, legatee, donee, or other successor, and every person to whom property passes for any beneficial interest in possession or in expectancy and every trustee, guardian, committee, or other person, in whom any interest in property so passing for the benefit of any other person or the management thereof, is at any time vested, shall be required within six months after the death of any person to file in the office of the Surrogate Registrar of the County or District in which the deceased, being domiciled or resident in Ontario, had a fixed place of abode, or in which the property or any part thereof was situate where deceased was resident out of Ontario, two duplicate original affidavits of value and relationship, attaching thereto inventories, giving full particulars in detail of the property, wheresoever situate, of the deceased, and any gifts *inter vivos*, and also schedule of relationship according to forms numbered "1."

2. When the aggregate value of the property, wheresoever situate, including any gift, transfer, or other disposition *inter vivos*, or other property within the meaning of section 7, does not exceed \$5,000, the heir, legatee or other successor may make and file two duplicate original affidavits of value and relationship in the short form, attaching thereto inventories in detail, and schedules of relationship, according to the forms numbered "2" hereunder, in lieu of those required by rule 1.

3. On all applications for letters probate, or of administration, or other grant, except letters of guardianship, made to any Surrogate Court in Ontario, the applicant or applicants shall at the time of filing the papers required by the practice of the Surrogate Courts make and file with the Surrogate Registrar two duplicate original affidavits of value and relationship similar to those required by rules numbered "1" and "2" following forms numbered "1" and "2" according to value of the property.

4. Such affidavits shall be made and filed in all cases without regard to the nature or value of the property of the deceased, but if any heir, legatee, donee, or other successor, or the executor or administrator applying for a grant to any Surrogate Court makes full disclosure of the property by filing the affidavits, inventories and schedule in the proper Surrogate Court, and otherwise fulfils the requirements of the Act, the others may be relieved by the Treasurer from so doing.

5. The Surrogate Registrar shall forthwith on receipt thereof forward one of such duplicate original affidavits, with schedules attached, to the Solicitor to the Treasury at the Succession Duty Office, Toronto, and shall at the same time forward to the Treasurer of Ontario, Toronto, a notice in the form numbered "2a" hereunder.

6. The affidavit or account required by section 11, subsection 4, showing property not disclosed on the filing of an account by the heirs, legatees or other successors, or upon the grant of letters probate or of administration or other grant, shall conform to forms numbered "1" or "2," according to the value of the property in the

affidavit or account previously filed and the property so disclosed.

7. For the purposes of determining the aggregate value and the rate of duty, the affidavits of value and relationship and accounts and inventories attached thereto shall set out the full particulars in detail of the property out of Ontario, as well as in Ontario, and the market value of each parcel or part thereof.

8. Where duty becomes payable on the falling into possession of any interest in expectancy, the successor or other person accountable for the duty, and the executor or administrator shall forthwith furnish to the Treasurer an account in detail verified by affidavit, and such other evidence as may be required, of the then value of the property of the deceased including the property to which such successor or other person accountable for the duty is entitled.

9. The Solicitor to the Treasury shall upon receipt of the said affidavit of value and relationship or other affidavit or account, determine whether in his opinion, the property of the deceased is liable, or may become liable to succession duty, and in case it appears to him that the same is liable or likely to become liable, he may require security to be given by the successor, or other person accountable for the duty, or by the applicant, which security may be by bond in the form numbered "3" or "4" hereunder, or by a deposit of a sufficient sum in addition to or substitution for a bond.

10. Where a bond is required to be given under the next preceding rule, such bond shall be in a penal sum not less than double the amount of such duty payable upon the succession or property passing subject to duty, or such lesser sum as may be fixed by the Solicitor to the Treasury, and where executed by the heir, legatee, donee or other successor, each shall be bound in an amount equal to double the duty on the portion of the succession or property passing to which such successor is entitled in possession or expectancy, and where executed by the applicant, or all the applicants, in case there are more than one, each shall be bound in the whole amount of the bond, and such bond shall also be executed by a guarantee company, approved by Order-in-Council under the Act respecting Security by Guarantee Companies, or by two or more sureties (to be approved by the Surrogate Registrar), who shall justify each in an amount equal to the sum for which he is to be liable, and the aggregate shall equal the amount of the penalty of the bond, and it shall be conditioned for the due payment to His Majesty of any duty to which the property passing to such successors may be found liable, and in the case of an executor or administrator for the due performance of his duties and obligations to collect such duty from the heirs and other persons accountable therefor pursuant to the Act. Persons beneficially entitled by will, or under intestacy, or as *cestuis que trustent* shall not be eligible as sureties.

11. This bond must be filed in the office of the Registrar of the Surrogate Court to which application is made or the account is filed, and a certified copy thereof sent forthwith to the Solicitor to the Treasury.

12. No letters probate, or of administration, or other grant shall issue without the consent in writing of the Solicitor to the Treasury or someone deputed by the Treasurer to act for him.

13. Where it is desired to register under section 56 of the Registry Act, an original will or other instrument without any grant from a Surrogate Court, the Surrogate Registrar of the County in which the deceased had a fixed place of abode, or in which the lands or any part thereof are situate, shall upon receipt of a similar

affidavit or verified account in duplicate, forward a duplicate original to the Solicitor to the Treasury, and upon receiving his written consent, shall issue, if required, a certificate of such filing in the form numbered "10" hereunder, or to the like effect, for the purposes of registration.

14. Where a caveat against the issue of letters probate, or of administration, or other grant, is lodged with the Surrogate Clerk or with the Registrar of any Surrogate Court in Ontario, the Surrogate Registrar of any County in which any lands of the deceased are situate, to whom notice of such caveat has been given, shall not issue the Certificate required by the next preceding rule until such caveat has been withdrawn and notice of such withdrawal has been given by the Surrogate Clerk or the Registrar of the Court in which it was lodged.

15. Upon the application for letters probate, or of administration or other grant, or on the filing of an account, or as soon thereafter as they are ascertained, full and true particulars of the debts, encumbrances and other allowances, shall be proven by affidavit of the executor, administrator, trustee, heir, legatee, or other person accountable for the duty, according to the form numbered "5" hereunder.

16. In cases where security has been given for the payment of succession duty as aforesaid, notice of any appointment for the passing of the accounts of the executor or administrator or other person, as the case may be, shall be served upon the Solicitor to the Treasury by the executor, administrator, or other person, or his solicitor, together with a copy of the accounts, and the affidavit verifying, seven clear days before the audit of such accounts.

17. Notice of the valuation and hearing by the Surrogate Judge (Form 8) under section 12, shall be served upon all parties directed to be served at least seven days before the commencement thereof, unless the Judge otherwise orders.

18. Notice of motion to extend the time under section 17 shall be served with the affidavit in support thereof on the Solicitor to the Treasury, at least seven days before the return thereof.

19. Affidavits under this Act may be sworn or affirmed before any person entitled to take affidavits for use in any Court of Record in this Province, but no affidavit, which has been sworn before the party on whose behalf the same is offered, or before his solicitor, or before the clerk or partner of such solicitor, shall be admissible in any matter or proceeding under this Act.

20. The fees payable out of the estate for the services of the Surrogate Judge and Registrar under section 20 shall be the same as those payable in contentious matters under the Surrogate Courts Act.

21. The subjoined forms are to be followed as nearly as the circumstances of each case will allow.

FORM 1.—AFFIDAVIT OF VALUE AND RELATIONSHIP.

This Affidavit is to be made by all Persons Applying for Letters Probate, or of Administration, or other grant, or on filing an Account,

THE SUCCESSION DUTY ACT, (ONTARIO).

Full Names, Addresses and Occupation of all Deponents:—

Canada, Province of Ontario. In the Surrogate Court of the County of

In the matter of the estate of _____ late of the
 of _____, in the _____ of _____ deceased.
 I, _____, make oath and say:—
 That _____ a _____ the applicant _____ for letters _____ of
 who died on or about the _____ day of _____ A.D. 19 _____,
 domiciled in _____.

Executor or Administrator Appointed by the Proper Probate Court at Place of Domicile, or the Heirs, Legatee, donee or other Successor Entitled to Property Where an Account is Filed:—That _____ have caused to be filed in the office of the Registrar of the above named Court a petition praying that letters _____ be granted _____ of the said deceased by the said Court.

That _____ have made full, careful and searching enquiry for the purpose of ascertaining what real and personal property and effects the said deceased was possessed of or entitled to, at the time of h _____ death, together with the market value thereof respectively.

That _____ have according to the best of _____ knowledge, information, and belief set forth in the Inventory herewith exhibited, marked "A." a full, true and particular account of all the real and personal estate of the said deceased or of which _____ he was possessed, or to which _____ he was entitled in possession or reversion absolutely or contingently or otherwise howsoever, at the time of h _____ death, or of which the deceased was competent to dispose, or over which _____ he had a general power of appointment, together with the market value as at the date of death, of each and every asset forming part of the said real and personal estate and particularized in the said inventory. The gross value of the estate wherever situate as at date of deceased death was \$ _____

That _____ have included in the said inventory every security, debt and sum of money outstanding due, or payable to, or standing to the credit of the said deceased at the time of h _____ death, and in estimating the value thereof have included all the interest due, payable, chargeable and accruing due thereon up to the death of the said deceased.

That _____ in the said inventory is included all the property of the said deceased situate out of Ontario as well as the property situated in Ontario.

That _____ to the best of _____ knowledge, information and belief, the said deceased did not voluntarily transfer by deed, grant or gift, made in contemplation of h _____ death, or made, or intended to take effect in possession or enjoyment after h _____ death, any property or any interest therein, or income therefrom, to any person in trust or otherwise by reason whereof any person is or shall become beneficially entitled in possession or expectancy in or to the said property, or income thereof.

That _____ to the best of _____ knowledge, information and belief, the said deceased did not at any time transfer to any person any property whatsoever by way of *donatio mortis causa*, nor did _____ he since the first day of July, 1892, make any disposition of property operating or purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, nor did _____ he at any time previous to h _____ death, transfer any property, of which property the *bona fide* possession was not assumed by the donee immediately upon the gift, and thenceforth

retained to the entire exclusion of the donor, or of any benefit to h , whether voluntarily, or by contract, or otherwise, except the property set out in the schedule marked Exhibit "B," and the fair market value of such property or the amount thereof, the person or persons to whom it was given, their addresses, the relationship in which they stand to the deceased, and the dates when so given, are therein correctly set out, and such transfer or other gift was made absolutely to the donee and took effect in the lifetime of the deceased and was part of h ordinary and normal expenditure for the maintenance and advancement of the persons so benefited.

That to the best of knowledge, information and belief, the said deceased did not transfer or cause to be transferred to or vested in h self and any other person jointly any property to which was absolutely entitled, so that the beneficial interest therein, or in some part thereof, passed or accrued by survivorship on h death to such other person, nor did make or effect, or cause to be made or effected, either by h self alone, or in concert, or by arrangement with any other person, any purchase or investment of property whatsoever for any other person, or in trust for h , except as set out in the said inventory.

That to the best of knowledge, information and belief, the said deceased was not at the time of h death a party to any past or future settlement, including any trust whether expressed in writing or otherwise, whether made for valuable consideration or not, as between the settlor and any other person, and not taking effect as a will, whereby an interest in such property or the proceeds of the sale thereof for life, or any other period determinable by reference to death, was reserved expressly or by implication to the deceased, or whereby the deceased reserved to h self the right by the exercise of any power to restore to h self or to reclaim the absolute interest in such property or the proceeds of the sale thereof, or otherwise resettle the same, or any part thereof, except as set out in the said inventory.

That to the best of knowledge, information and belief, no annuity, policy of insurance, or other interest had been purchased or provided by the said deceased, either by h self alone, or in concert, or by arrangement with any other person, except as set out in the said inventory.

That have in the schedule market Exhibit "C" set forth the names of the several persons to whom the property of the said deceased will pass, the degrees of relationship, if any, in which they stand to the deceased, their addresses so far as can ascertain them, and the nature and value of the property passing to each of these persons respectively, and that the several persons who receive annuities or estates for life, or bequests of income were on their last birthday previous to the date of the deceased's death, the ages respectively set opposite their names.

Sworn before me at the of
in the County of
this day of A.D. 191 .

A Commissioner, etc., or Notary Public, etc.

This Affidavit is filed on behalf of the applicant by

.....
Solicitor.

FORM 2.—SHORT AFFIDAVIT OF VALUE OPTIONAL
UNDER REGULATION 2.

*This Affidavit is to be made by all Persons applying for Letters
Probate or of Administration or other grant, or on filing
Account.*

THE SUCCESSION DUTY ACT (ONTARIO).

Canada, Province of Ontario. In the Surrogate Court of the
County (District) of

In the matter of the estate of
late of the of , in the
County (District) of , deceased.

I (or we), make oath and say:—

That* a the applicant for letters
of the above named , who died on or about the
day of , 19 , domiciled in

That have according to the best of knowledge, information and belief set forth in the inventory herewith exhibited marked "A," a full, true and particular account of all the real and personal estate of the said deceased situate out of as well as in the Province of Ontario or of which the said deceased was possessed or to which he was entitled at the time of his death either in possession, remainder or reversion absolutely, contingently or otherwise howsoever, together with the market value as at the date of death of each and every asset, and the gross value thereof did not exceed the sum of \$5,000. The said inventory includes all the real and personal estate of which the deceased was competent to dispose or over which the deceased had a general power of appointment.

So far as have been able to ascertain after a careful and searching investigation of his affairs, the said deceased did not make any gift, transfer or delivery of any property or any declaration of trust, settlement, deed or other instrument of appointment, nor did he purchase or provide any annuity, policy of insurance or other interest, or make any other disposition of any property whatsoever within the meaning and intent of subsection 2 of section 7 of the Succession Duty Act, except†

That have in the schedule herewith exhibited, marked "B," set forth the names of the several persons to whom the property of the said deceased will pass, the degrees of relationship, if any, in which they stand to the deceased, their addresses so far as

* Where an account is filed, state that deponent is executor or administrator appointed by the proper Probate Court at the place of domicile, or is heir, legatee, donee or other successor entitled to property devolving.

† Give particulars of gifts or other dispositions, stating amounts or market value, the dates when transferred and whether possession and enjoyment by donee to entire exclusion of donor followed such gift.

can ascertain them, and the nature and value of the property passing to each of these persons respectively.

Sworn before me at the _____ of
in the _____ County of _____
this _____ day of _____ A.D. 191 _____.

A Commissioner, etc., or a Notary Public, etc.
This Affidavit is filed on behalf of the applicant _____ for letters
by _____
.....
Solicitor.

SCHEDULE A.—FORMS 1 AND 2.

SHEWING AN INVENTORY IN DETAIL OF PROPERTY, WHERESOEVER
SITUATE.

In the Surrogate Court of the _____ of _____
In the matter of the estate of _____ deceased, late of the
of _____ in the Count _____ of _____

THE SUCCESSION DUTY ACT (ONTARIO).

Real Estate Give short description of each parcel or lot with dimensions for purposes of identification.	Fair market value of property, exclusive of liens and encumbrances.
	\$ c.
Total ...	

MONEYS SECURED BY MORTGAGE.

Name of Mortgagor	Short description of land	Other particulars including date, principal payments on account, rate of interest, and date from which interest has been accruing to date of death	Principal	Interest	Total
			\$ c.	\$ c.	\$ c.
		Total			

BOOK DEBTS AND PROMISSORY NOTES, ETC.

Name of Debtor or Payor	Address (City, town or Province)	Particulars including date due, principal, payments on account, rate of interest, and date from which interest has been accruing to date of death	Principal	Interest	Total
			\$ c.	\$ c.	\$ c.
		Total.....			

SECURITIES FOR MONEY, INCLUDING LIFE INSURANCE AND CASH ON HAND AND IN BANK.—(See Note below.)

Name of Company or otherwise	Head Office of Company or Residence of persons (whether in Ontario or elsewhere)	Other particulars as above, and if owned by a non-resident where registered	Principal	Interest	Total
			\$ c.	\$ c.	\$ c.
		Total.....			

BANK STOCKS AND OTHER STOCKS.

No. of Shares	Full Name of Company	Head Office (Ontario or elsewhere)	Kind of Stock Common or Preferred	Amount Paid up	Par Value	Fair Market Value
				\$ c.	\$ c.	\$ c.
			Total.....			

MISCELLANEOUS ASSETS NOT HEREINBEFORE MENTIONED, IF ANY.

Give full particulars here	Fair Market Value
Household Goods and Furniture.....	\$ c.
Pictures, Plate and Jewelry.....	
Stock-in-Trade of Business or Industrial Concern.....	
Goodwill of Business or Industrial Concern.....	
Farm Implements.....	
Farm Produce of all Kinds.....	
Horses.....	
Horned Cattle.....	
Sheep and Swine.....	
Any other Property.....	
Total.....	

NOTE.—State fully if bonds, debentures and other securities, owned by a foreign decedent, are in his possession elsewhere than in Ontario and are actually listed on a register out of Ontario where a transfer can be made without any act being required at the head office in Ontario.

SUMMARY.

	Principal or Market Value	Interest	Total
	\$ c.	\$ c.	\$ c.
Real Estate.....			
Moneys Secured by Mortgage.....			
Book Debts and Promissory Notes.....			
Securities for Money, including Life Insurance and Cash in Bank and on hand.....			
Bank Stocks and other Stocks.....			
Miscellaneous Assets not hereinbefore mentioned (if any).....			
Total.....			

This is Schedule "A" referred to in the affidavit of value and relationship of

Sworn before me on the day
of A.D. 191 .

.....
A Commissioner, etc., or Notary Public, etc.

SCHEDULE B.—FORMS 1 AND 2.

In the Surrogate Court of the County (District) of

In the matter of the estate of , deceased, late of
the of in the County (District) of

THE SUCCESSION DUTY ACT (ONTARIO).

Date of Gift or Settle- ment	Name of Donee and Trustees if any	Address	Trace Relation- ship to Deceased	Nature of Gift or Property given	Amount of Gift or fair market value of Property	Any other facts re- lating to Gift.

This is Schedule "B" referred to in the Affidavit of Value and Relationship of

Sworn before me on the day
of A.D. 19 .

.....
A Commissioner, etc., or Notary Public, etc.

SCHEDULE C.—FORMS 1 AND 2.

In the Surrogate Court of the County of

THE SUCCESSION DUTY ACT (ONTARIO).

In the matter of the estate of _____, deceased, late of
 the _____ of _____ in the _____ County
 of _____

Name of Legatee	Relationship	Address	Age last birthday of life tenant or annuitant	Nature of bequest or property passing.	Value

This is Schedule "C" referred to in the affidavit of Value and Relationship of

Sworn before me on the _____ day
 of _____ A.D. 191 _____

.....
A Commissioner, etc., or Notary Public, etc.

No.

FORM 2a.—NOTICE OF APPLICATION FOR LETTERS.

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the _____ County of _____

In the matter of the estate of _____, deceased.

Strike out the irrelevant words. Notice is hereby given that application for letters probate, of administration, administration with the will annexed, resealing or ancillary letters probate or of administration, has been received as herein set forth.

 Name of deceased

 Date of death

 Domicile at death

 Name or Names of applicant or applicants

 Name of applicant's solicitor

 Value of assets in Ontario

 Value of assets, if any, elsewhere than in Ontario

Dated at _____ this _____ day
 of _____ 19 _____

.....
Surrogate Registrar.

The Hon. the Treasurer of the Province of Ontario.

FORM 3.—BOND BY ALL APPLICANTS FOR LETTERS
PROBATE OR OTHER GRANT OR BY TRUSTEES.

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the

In the matter of the estate of , deceased.

Know all men by these presents that we,
of the of , in the Count of
, of the of in the
Count of , and
of the of , in the Count of
, are jointly and severally bound unto His
Majesty the King in the sum of \$, to be paid to the
Treasurer of the Province of Ontario for the time being for which
payment well and truly to be made we bind ourselves and each of us
for the whole and our and each of our heirs, executors and adminis-
trators.* firmly by these presents.

Sealed with our seals.† Dated the day of

in the year of our Lord, A.D. 19 .

NOTE.—The penal sum should not be less than double the duty payable on the property subject to duty. The sureties must be one of the Guarantee Companies approved by Order of His Honour the Lieutenant-Governor in Council or two or more disinterested persons who will together justify to the aggregate of the penal sum.

The condition of this obligation is such that if the above named
of the of all the property
of , late of the of
in the County of , deceased, who died on or
about the day of A.D. 19 ,
do collect from the person liable therefor and cause to be paid to
the Treasurer of the Province of Ontario for the time being, repre-
senting His Majesty the King in that behalf, any and all duty to
which the property, estate and effects of the said deceased may be
found liable under the provisions of the Succession Duty Act, within
the time or times provided for under Section 15 of the said Act or
such further time as may be given for payment thereof under Sec-
tion 17 or otherwise by the said Act, and otherwise perform the
duties and obligations required of them by the said Act, then this
obligation shall be void and of no effect, otherwise the same to
remain in full force and virtue.

Signed, sealed and delivered in the presence of

*Where a Guarantee Company is surety add: "and the said Company for itself, its successors and assigns, binds itself for the whole firmly by these presents.

†And the said Company affixes its corporate seal and the hand of its "President" or "Manager for Canada."

AFFIDAVIT OF JUSTIFICATION.

Ontario,
County of
To Wit:

I,

one of the sureties in the annexed bond
named, make oath and say as follows:—

(1) I am seized and possessed to my own use of property in
the Province of Ontario, of the actual value of dollars
over and above all charges upon and incumbrances affecting the
same.

(2) I am worth the sum of dollars,
over and above my just debts, and any sum for which I am liable
as surety or otherwise, except upon the said bond.

(3) My post-office address is as follows:—

Sworn before me at in the Count
of this day of

19 .

A Commissioner, etc., or Notary Public, etc.

AFFIDAVIT OF JUSTIFICATION.

Ontario,
Count of
To Wit:

I,

one of the sureties in the annexed
bond named, make oath and say as follows:—

(1) I am seized and possessed to my own use of property in
the Province of Ontario, of the actual value of dollars
over and above all charges upon and incumbrances affecting the
same.

(2) I am worth the sum of dollars,
over and above my just debts, and any sum for which I am liable
as surety or otherwise, except upon the said bond.

(3) My post-office address is as follows:—

Sworn before me at in the Count
of this day of

19 .

A Commissioner, etc., or Notary Public, etc.

AFFIDAVIT OF EXECUTION.

Ontario,
Count of
To Wit:

I,

in the Count of
make oath and say as follows:—

(1) I am the person whose name is subscribed to the annexed
bond as the attesting witness to the execution thereof, and the
signature set and subscribed
thereto as such attesting witness is of my proper handwriting, and
my name and addition are correctly above set forth.

(2) I was present and did see the said bond duly signed and executed by _____, therein named.

(3) I am well acquainted with the said
Sworn before me at _____ in the County
of _____ this _____ day of
19 _____.

A Commissioner, etc., or Notary Public, etc.

FORM 4.—BOND BY LEGATEE, NEXT-OF-KIN, DONEE OR
OTHER SUCCESSOR.

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the
In the matter of the estate of _____, deceased.
Know all men by these presents that we,
of the _____ of _____, in the _____ County of
_____, of the _____ of _____ in the
County of _____, and
of the _____ of _____, in the _____ County of
_____, are jointly and severally bound unto His
Majesty the King in the sum of \$ _____, to be paid to the
Treasurer of the Province of Ontario for the time being for which
payment well and truly to be made we bind ourselves and each of
us for the whole and our and each of our heirs, executors and
administrators* _____ firmly by these presents.
Sealed with our seals† Dated the _____ day of
in the year of our Lord, A.D. 19 _____.

NOTE.—The penal sum should not be less than double the duty payable on the property subject to duty passing to all legatees, next-of-kin or other successors who join in same bond, but if separate security is given by each successor it should be double the duty on the property passing to such successor. The sureties must be one of the Guarantee Companies approved by Order of His Honour the Lieutenant-Governor in Council or two or more disinterested persons who will together justify to the aggregate of the penal sum.

The condition of this obligation is such that if each of the
above named _____, the‡ _____ of
property of _____, late of the
of _____, in the County of _____
deceased, who died on or about the _____ day of
A.D. 19 _____, do well and duly pay or cause to be paid to the Treasurer
of the Province of Ontario for the time being, representing His
Majesty the King in that behalf, any and all duty to which the prop-
erty to which each is beneficially entitled.**

may be found liable under the provisions of the Succession Duty
Act, within the time or times provided for under Section 15 of the
said Act or such further time as may be given for payment thereof
under Section 17 or otherwise of the said Act, then this obligation
shall be void and of no effect, otherwise the same to remain in full
force and virtue.

Signed, sealed and delivered in the presence of

*Where a Guarantee Company is surety add: "and the said Company for itself, its successors and assigns, binds itself for the whole."

†And the said Company affixes its corporate seal and the hand of its "President" or "Manager for Canada."

‡Legatees, next-of-kin, donees or other successors."

**Under the deceased's will, by intestacy, by settlement made by the deceased or for his benefit by other gift *inter vivos* (as the case may be.)

such attesting witness is of my proper handwriting, and my name and addition are correctly above set forth.

(2) I was present and did see the said bond duly signed and executed by _____, therein named

(3) I am well acquainted with the said

Sworn before me at _____ in the Count
of _____ this _____ day of
19 .

A Commissioner, etc., or Notary Public, etc.

FORM 5.—AFFIDAVIT OF DEBTS.

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the _____ of

In the estate of _____, deceased.

I, _____, of the _____ of
in the _____ of _____, make oath and say:—

That I have in the first part of the schedule, marked exhibit “A,” set forth full and true particulars of the debts incurred by the deceased and encumbrances created by a disposition made by the deceased, and the funeral expenses and Surrogate fees allowed as deductions by the Succession Duty Act.

That such debts and encumbrances were incurred and created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, and take effect out of his estate. That there is no right to reimbursement for any debt or encumbrance included in such schedule from any other estate or person (*nor can any reimbursement be obtained from the persons primarily liable or as contributors for the amount so set out in such schedule), nor is the same debt or encumbrance charged more than once upon different portions of the estate.

That all the said debts and encumbrances have been allowed and paid by the executors, administrators, _____ except those set out in the second part of such schedule and the reasons for such non-payment are respectively set opposite thereto.

Sworn before me at the _____ of
in the _____ of
this _____ day of _____ A.D. 19 .
A Commissioner, etc., or Notary Public, etc.

*As the case may be (strike out irrelevant words.)

†Or as the case may be.

ONTARIO SUCCESSION DUTY ACT.

FORM 5.—SCHEDULE OF DEBTS.
THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the _____ of _____

In the matter of the estate of _____, deceased,
late of the _____ of _____ in the _____ of _____

FIRST PART.

Name of Creditor	Address	Nature of Claim	Amount Paid
			\$ c.
		Total.....	

SECOND PART.

Name of Creditor	Address	Nature of Claim	Amount un- paid or in dispute	Reason for non-payment
			\$ c.	
		Total.....		

This is Schedule marked "A" referred to in the Affidavit of
Debts of _____Sworn before me on the _____ day
of _____ A.D. 19 ____.....
A Commissioner, Etc.FORM 6.—DIRECTION TO SURROGATE JUDGE TO MAKE
VALUATION AND ASSESS DUTY.

(Section 12.)

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of _____

In the matter of the estate of _____, deceased.

To the Surrogate Judge of the Court of _____ of _____

At the request of the Treasurer of the Province of Ontario, I
hereby direct that you do make a valuation of all property of the
deceased and determine the liability of the estate for duty and the
persons by whom it is payable in accordance with the Succession
Duty Act.

Dated at Toronto, this _____ day of _____ 19 ____

(Section 12.)

FORM 8.—NOTICE BY SURROGATE JUDGE TO EXECUTORS,
ADMINISTRATORS AND INTERESTED PERSONS
DIRECTED TO BE SERVED.

(Section 12.)

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the Count of
In the matter of the estate of , deceased.
To

Take notice that His Honour , Judge of
the Surrogate Court, will, on the day of ,
19 , at the hour of in the noon at his chambers
in the Court House at the of
proceed to make a valuation of all the property of the deceased
within the meaning of the Succession Duty Act, to fix the amount
of the debts and other deductions and exemptions, to determine the
liability of the estate for duty, and persons liable therefor, under
the devolution by reason of the deceased's death, and the time or
times when such duty is payable.

Take notice that you are required to attend at the above time
and place, and so from day to day until the hearing is ended, and
that in default of your so doing, he will proceed to hear and deter-
mine all matters upon the showing of the Treasurer of Ontario.

Take notice further, that you are required further to produce
before him at the said time and place of all books, books of account,
accounts, title deeds, securities for moneys, promissory notes, and
other documents and papers relative to the property, the liability
of the estate for such duty and the matters in question herein and
particularly the following:—

Dated the day of , 19 .

Registrar of the Surrogate Court of the

FORM 9.—REPORT OF SHERIFF.

(Section 12, ss. 6.)

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the
In the matter of the estate of , deceased.
To the Judge of the said Surrogate Court:—

Pursuant to an order made in this matter and dated the
day of , A.D. 19 , directing me to
make a valuation and appraisement of the property or parts of the
property (*as the case may be*) more particularly described in the
inventory attached to the affidavit of value and relationship filed,
or wrongfully omitted from such inventory (*as the case may be*)

*Insert Documents Specially Required to be produced. !

State here any Special or other Provisions of Judge's Order.

and set out in the schedule hereto annexed, I proceeded in the presence of _____ (or personally, as the case may be) to make an appraisal and valuation of the said property at its fair market value on the day of the deceased's death, being the _____ day of _____ 19____, (or as the case may be), and do value and appraise the same at the sum of \$ _____ as appears from the schedule hereto annexed.

Dated _____ day of _____, 19____.

Sheriff of the Count of

FORM 10.

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the County of _____

In the matter of the estate of _____, deceased.

This is to certify that a statement verified on oath of all the property owned by the above named deceased, who died on or about the _____ day of _____, in the year of our Lord one thousand nine hundred and _____, and who at the time of death had a fixed place of abode at the _____ of _____ in the Count of _____ and Province of Ontario, has been filed in this office pursuant to sub-section 1 of section 11 of The Succession Duty Act and the rules and regulations thereunder.

This certificate is given only for the purpose of registration of the original will or other instrument under section 56 of the Registry Act.

Dated at _____, this _____ day of _____ A.D. 191____.

Registrar of the Surrogate of the County of

To the Registrar of the Registry Division of

FORM 11.

THE SUCCESSION DUTY ACT (ONTARIO).

In the matter of the estate of _____, late of _____, in the Count of _____, deceased.

CERTIFICATE OF DISCHARGE.

(Section 15.)

This is to certify that the full amount of Succession Duty payable under the devolution by reason of the death of _____ the above named deceased, has been paid, and the property set forth in the affidavits and papers filed in the Suc-

cession Duty Office is therefore discharged from any further claim to succession duty under such devolution.

This certificate is given under the terms and subject to the condition of section 15 of the Succession Duty Act.

Dated at Toronto, this day of A.D. 191 .

Provincial Treasurer.

Countersigned,

Solicitor to the Treasury.

APPENDIX B.

THE LIEUTENANT-GOVERNOR, by Order-in-Council, has approved of the following companies under the Act respecting the Acceptance of certain incorporated Companies as Sureties and the bonds of these companies may be filed under the Succession Duty Act:—

1. Dominion of Canada Guarantee and Accident Insurance Company.
2. Guarantee Company of North America.
3. London Guarantee and Accident Company, Limited.
4. Employers Liability Assurance Corporation, Limited.
5. American Surety Company of New York.
6. United States Fidelity and Guarantee Company.
7. Imperial Guarantee and Accident Company.
8. London and Lancashire Guarantee and Accident Company.
9. The Maryland Casualty Company.
10. The National Surety Company of New York.
11. The Guardian Accident and Guarantee Company of Montreal.
12. Railway Passengers Assurance Company of London, England.
13. Ocean Accident and Guarantee Corporation, Limited.
14. Canadian Surety Company.
15. Dominion Gresham Casualty Company.
16. Globe Indemnity Company of Canada.

APPENDIX C.

ORDERS-IN-COUNCIL, extending the provisions of section 9 as to the allowance of duty paid elsewhere, have been passed on the respective dates set opposite thereto, with respect to the following countries and provinces of the Dominion of Canada:

United Kingdom of Great Britain and Ireland	12th January, 1906.
British Columbia	2nd July, 1908.
Manitoba	30th April, 1909.
New Brunswick	23rd July, 1907.
Nova Scotia	23rd September, 1907.
Saskatchewan	28th August, 1908.
Prince Edward Island	14th November, 1912.

PROVINCE OF NEW BRUNSWICK.**SUCCESSION DUTY ACT.****As Amended by Cap. 41, 1916****CAP. XXVII—ACTS 1915.****An Act to Amend and Consolidate the Law Relating
to Succession Duty.**

	Section.
Short Title	1
Definition of terms and expressions	2
Definition of term "Succession" and "Successor;" what same shall imply and denote	3
How probate value determined; what allowances to be made; what not to be made	4
In what cases of succession in N. B. deduction may be made for succession payable abroad	5
To what property Act shall not apply	6
How succession duty computed; made debt to the Crown	7
What property shall be deemed within the Province	8
What property passing at death shall be deemed to include ..	9
Rates by which succession shall be computed	10
Power to Lieut.-Gov.-in-Council to make provision as to succes- sion duties with other Provinces and countries in certain cases	11
Executor, etc., to file statement under oath with Registrar; what same shall contain; bond for payment of duty; default in filing inventory or bond	12
Who accountable for duty in certain cases; proceedings	13
Limitation of transfer of property of a deceased person in cer- tain cases	14
If treasurer not satisfied with inventory, etc., may empower Judge of Probate to inquire into the connection of same; proceedings in such case	15
How value of annuity, etc., may be determined; proceedings ..	16
Appeal from decision of Judge of Probate; limitation of	17
When succession duty due and payable; when interest charge- able	18
Power of Lieut.-Gov.-in-Council to reduce or postpone payment in certain cases	19
In what cases executor, etc., personally liable for duty; how recoverable	20
In what cases treasurer may make order extending time for payment	21
Power of executor, etc., to sell property to pay duty	22
In what case a refund of duty made to executor, etc.	23
Power of Judge of Probate to hold inquiry in case duty not paid	24
What costs allowed and according to what scale	25
Statement to be made by Registrar for Attorney General; what to contain	26
In what cases a settlement may be made and in what manner..	27
In what cases an inquiry into value of estate may be made; procedure in such cases	28
Attendance of witnesses; how enforced	29
In what case double duty payable; proceedings; how transferee or property may escape same	30

Appeal to Lieut.-Gov.-in-Council	31
No payment a bar to enquiry or payment of additional duties if estate found liable to same	32
Power to Lieut.-Gov.-in-Council to make regulations	33
Allowance to Attorney General for collection of duties; how same to be taxed	34
Application of this Act	35
Repealing section	36

Passed 5th May, 1915.

Be it enacted by the Lieutenant-Governor and Legislative Assembly,
as follows:—

1. Short Title.—This Act may be cited as “The Succession Duty Act, 1915.”

2. Meaning of Words and Phrases.—In this Act the following words and expressions shall be construed in the manner hereinafter mentioned, unless a contrary intention appears:

- (a) “Aggregate value” shall mean the fair market value of the property after the just debts, encumbrances and allowances authorized by Section 4 of this Act are deducted therefrom, and for the purpose of determining the aggregate value and the amount of duty payable the value of property situate out of New Brunswick shall be included;
- (b) “Beneficial interest” shall mean the fair market value of the property after the debts, encumbrances and other allowances and exemptions authorized by this Act, are deducted therefrom;
- (c) “Dutiable value” shall mean the value to which any rate is applied for the purpose of computation under Section 10;
- (d) “Son” or “daughter” shall include any lawful child of the deceased or any person adopted while under the age of twelve years by the deceased as his child, or any infant to whom the deceased for not less than five years immediately preceding his death stood in *loco parentis*.
- (e) “Executor” shall include an administrator, trustee, guardian, committee or other person seized or possessed of or entitled to any property in a fiduciary capacity;
- (f) “Interest in Expectancy” shall include an estate, income or interest in remainder, or reversion and any other future interest whether vested or contingent, but shall not include a reversion expectant on the determination of a lease;
- (g) “Passing on the death” shall mean passing either immediately on the death or after an interval, either certainly or contingently, and either originally or by way of substitutive limitation, whether the deceased was at the time of his death domiciled in New Brunswick or elsewhere; and the expression “on the death” includes at a period ascertainable only by reference to the death;
- (h) “Property” shall include real and personal property of every description and every estate and interest herein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives;

- (i) "Treasurer" shall mean the Provincial Secretary-Treasurer of New Brunswick;
- (j) "Sheriff" shall include "Coroner;"
- (k) "Registrar" shall mean "Registrar of Probate;"
- (l) "Transfer" or "Transferred" in the Succession Duty Act, 1912, and in any amending Act to said Act, and in this Act shall, without limitation or restriction in its meaning by reason of this Section, be held to mean and include any disposal of property or interest therein by transfer or trust or any making over or vesting of the same, in any incorporated company in the lifetime of the owner; and any property or interest in any property transferred in the lifetime of the deceased, since the seventh day of April, 1892, voluntarily or without adequate consideration, shall be deemed *prima facie* to have been made with intent to evade the payments of duties incurred under "The Succession Duty Act, 1892," "The Succession Duty Act, 1896," Chapter 17 of the Consolidated Statutes, 1903, and this Act.

3. Disposition of Property Since 7th April, 1892.—Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death happening after the seventh day of April, 1892, whether the death has heretofore or shall hereafter happen, of any person domiciled in New Brunswick, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person so domiciled to any other person in possession or expectancy shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "Succession," and the term "Successor" shall denote the person so entitled.

4. Dutiable Value of Property Determined.—In determining the dutiable value of property, or the value of a beneficial interest in property, the fair market value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses, debts and encumbrances and Probate Court fees (not including solicitor's charges); and any debt or encumbrance for which an allowance is made shall be deducted from the value of the land or other subject of property liable hereto; but an allowance shall not be made:

- (a) For any debts incurred by the deceased or encumbrances created by a disposition made by him, unless such debts or encumbrances were created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and to take effect out of his interest; nor
- (b) For any debt in respect whereof there is a right to reimbursement from any other estate or person unless such reimbursement cannot be obtained; nor
- (c) More than once for the same debt or encumbrance charged upon different portions of the estate; nor
- (d) Save as aforesaid, for the expense of the administration of the estate or the execution of any trust created by the will of the deceased or by any instrument made by him in his lifetime.

5. Deduction of Amount of Duty Payable in any part of British Dominions other than New Brunswick.—Where in respect of any succession in New Brunswick any estate, legacy or succession duty is payable in any part of the British Dominions other than New Brunswick, or in a foreign country by the law of that country, in respect of which no allowance of duty is made under Section 11, and the Treasurer is satisfied that by reason of such succession any duty is payable there in respect of it, he shall allow the amount of that duty to be deducted from the value of the succession in New Brunswick.

6. Exemptions.—No duty shall be computed in reference to:

(1) Any estate the aggregate value of which does not exceed \$5,000; nor

(2) Any property given, devised or bequeathed for religious, charitable or educational purposes to be carried out in New Brunswick, nor the amount of any unpaid subscription for any like purpose made by any person mentioned in this sub-section for which his estate is liable; nor

(3) Any property passing by will, intestacy or otherwise to or for the use of a father, mother, husband, wife, son, daughter, daughter-in-law, of the deceased, where the aggregate value of the property of the deceased does not exceed \$50,000; nor

(4) Any property passing to any one person which does not exceed two hundred dollars in value.

7. (1) Duty Payable out of Property within the Province.—Succession duty shall be computed as provided in Section 10 of this Act, but the amount of duty ascertained by such computation shall be directly imposed upon, paid out and borne only by the property within the Province passing on the death of a deceased person; and no person becoming entitled to such property within the Province, or any part of the same, shall have any claim against any other property of the deceased, or against any person becoming entitled to the same for contribution in respect of the said succession duty; but nothing herein contained shall prevent any testator from directing out of what fund or property the succession duty in respect of his estate shall be paid.

(2) **Succession Duty a Crown Debt.**—Succession duty is hereby declared to be and to rank as a debt due to the Crown in right of the Province immediately before the death of the deceased.

The Receiver-General of the Province of New Brunswick vs. Rosborough Executor, etc., of Walker. 43 N. B. R. 258.

Specialty debts secured by bond and mortgage of real estate situate in the City of Halifax, in the Province of Nova Scotia, the mortgagors being domiciled in the said Province, and the bonds and mortgages being in the possession of the testator in this Province at the time of his death are liable to duty under "The Succession Duty Act." C. S. 1905, c. 17.

Such duty is not payable on debenture stock of the City of Halifax transferable and redeemable at the office of the City Treasurer of Halifax and not elsewhere, nor on money deposited at the Halifax branch of the Royal Bank of Canada for which the testator held a deposit receipt, nor for money on deposit in the said branch bank on current account for which the testator held a pass book.

The aggregate value of the estate under clause (a) of s. 5 of

the Act is all the property owned by the deceased at the time of his death and such aggregate value and not the aggregate value of his property liable to succession duty is the basis upon which the rate of taxation is to be computed and fixed.

8. (1) What Property Deemed to be Within the Province, for the Purposes of this Act.—So far as the Legislative authority of the Province extends to do so, the following property shall be deemed to be within the Province:

- (a) All property situate within the Province belonging to a deceased person, whether such person was or was not domiciled therein; and
 - (b) All property situate outside the Province belonging to a deceased person domiciled therein; and
 - (c) All property situate outside the Province belonging to a person not domiciled therein, if and to the extent that such property shall pass by demise, or on intestacy, or by transfer to a person domiciled therein; and
 - (d) All simple contract debts due to a person domiciled within the Province, whether the debtor resides herein or without the Province; and
 - (e) All specialty debts due to a person domiciled within the Province, whether the instrument creating or evidencing any such debt is within or without the Province; and
 - (f) All debts due to a person domiciled within the Province, notwithstanding that the same may be wholly or partly secured by or be a charge upon land or other property without the Province; and
 - (g) All shares, stock, inscribed stock, dividend warrants, script, debentures or other similar property or evidence or assurance thereof, notwithstanding that the same, or any of them, may be transferable or payable only at some place without the Province, or that the head office or principal place of business of any company or corporation issuing the same may be without the Province, if the same are owned by a person domiciled within the Province.
- (2) The enumeration of specified forms of property in clauses (d), (e), (f) and (g) of the foregoing sub-section, shall not be deemed to limit in any way the generality of clauses (a), (b) and (c) thereof.

9. (1) What Property Deemed to be Property Passing on the Death of any Person for the Purposes of this Act.—Property passing on the death of any person shall be deemed to include for all purposes of this Act the following property:

- (a) Any property or interest therein, or income therefrom voluntarily or without adequate consideration transferred by deed, grant, bargain sale or gift made on general contemplation of the death of the grantor, bargainor, vendor or donor, and with or without regard to the imminence of such death made or intended to take effect in possession or enjoyment after such death to any person in trust or otherwise, or the effect of which is that any person becomes beneficially entitled in possession or expectancy to such property or income.
- (b) Any property taken as a *donatio mortis causa*, or taken

under a disposition operating or purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise made since the seventh day of April, 1892.

- (c) Any property which a person having been absolutely entitled thereto, has caused, or may cause to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person including also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone or in concert as by arrangement with any other person;
- (d) Any property passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not, as between the settlor and any other person, made by deed or other instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof for life, or any other period determinable by reference to death, is reserved, either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself, or to reclaim the absolute interest in such property, or the proceeds of sale thereof, or to otherwise re-settle the same or any part thereof;
- (e) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased;
- (f) Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of any existing or future donee, whether nominee or assignee, or for any person who may become a donee, or a part of such money in proportion to the premiums paid by him where the policy is partially kept up by him for such benefit;
- (g) Any property of which the person dying was at the time of his death competent to dispose of properly if he has such an estate or interest therein or such general power as would if he were *Sui juris* enable him to dispose of the property as he thinks fit, whether the power is exercisable by instrument *inter vivos* or by will or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose;
- (h) Any estate in dower or by the curtesy in any land of the person so dying of which the wife or husband of the deceased becomes entitled on the decease of such person.

(2) **Exemptions.**—Property passing on the death shall not be deemed to include any property *bona fide* transferred for a consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, except to the extent, if any, to which the value of the property transferred exceeds that of the consideration so paid.

10. Rates by Which Succession Duty Shall be Computed Under this Act.—The rates by which succession duty shall be computed shall be as follows:

- (a) Where the aggregate value of the property of the deceased exceeds \$50,000 by applying a rate of one and one-quarter per centum to the value of so much thereof as passes upon the death to or for the benefit of his father, mother, husband, wife, son, daughter, brother, sister, son-in-law, or daughter-in-law, up to \$50,000, and by applying a rate of two and one-half per centum to the value in excess of \$50,000 so passing, and up to \$200,000.
- (b) Where the aggregate value of the said property exceeds \$200,000 by applying a rate of five per centum to the value of so much thereof as passes to or for the benefit of the classes of persons mentioned in (a).
- (c) Where the aggregate value of the property exceeds \$10,000 by applying a rate of five per centum to the value of so much thereof as passes to or for the benefit of the grandfather or grandmother, or any other lineal ancestor of the deceased, except the father or mother, or to any descendant of a brother or sister, or to a brother or sister of the father or mother of the deceased, or to any descendant of such last mentioned brother or sister, or to a grandchild or other descendant of the deceased, except a son or daughter.
- (d) Where the aggregate value of the property exceeds \$5,000, and any part thereof passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased, save as hereinbefore provided for, by applying a rate of ten per centum to the value of so much thereof as so passes.
- (e) Where any successor resides out of the Province, by applying to the value of so much of the said property as passes to him, double the rate hereinbefore provided for.

Succession Duty Act Amended.

CAP. XLI.—ACTS 1916.

An Act to Amend “The Succession Duty Act, 1915.”

Sec.

Clause (a) and (c) of Sec. 10, of Succession Duty Act, 1915,	
amended	1
Sec. 35 of said Act amended	2

Passed 29th April, 1916.

Be it enacted by the Lieutenant-Governor and Legislative Assembly, as follows:

1. Section 10 of The Succession Duty Act, 1915, is hereby amended by striking out the words “brother,” “sister,” in the 5th and 6th

lines of clause (a) thereof; also by inserting the words "a brother or sister, or," before the word "any" in the 6th line of clause (c) of said section.

11. Provision for Allowance of Deductions in Cases Where Succession Duty Paid in Other Countries or Other Parts of the British Dominions.—Where the Treasurer is satisfied that in any part of the British Dominions other than New Brunswick, or in any foreign country to which this section applies, any estate, legacy or succession duty is paid by reason of the succession in New Brunswick, an allowance for the duty so paid from the amount payable to this Province, so far as the same has been computed, with respect to the same property; provided that any such allowance shall be made only as to such part of the British dominions or as to such foreign country as to which the Lieutenant-Governor-in-Council shall have extended the provisions of this section. Provided, also, that the Lieutenant-Governor-in-Council may revoke any Order-in-Council made under this section,

12. Statement to be Filed With Registrar.—An executor or administrator, as a condition of obtaining letters testamentary, or letters of administration, or ancillary letters to the estate of a deceased person, shall at the time of making application for such letters, or within such time thereafter, not exceeding three months, as may be allowed by the Registrar, make and file with the said Registrar in duplicate a full, true and correct statement under oath showing in the Form No. 1 in the schedule hereto:

- (a) A full itemized inventory of all the property of the deceased person, and the market value thereof;
- (b) The several persons to whom the same passes under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased;

Bond to be Delivered to the Registrar.—And the executor or administrator shall, before the issue of letters, testamentary, or of administration, deliver to the Registrar a bond in a penal sum equal to ten per centum of the value sworn to in the application for letters testamentary or of administration of the property of the deceased person, executed by himself and two sureties, to be approved by the Registrar, conditioned for the due payment to His Majesty of any duty to which the property coming to the hands of such executor or administrator of the deceased may be found liable. The Registrar shall transmit one copy of the statement in form A and said bond to the Treasurer.

13. When no Executor or Administrator.—When property within the Province passes on the death of any person, and no executor or administrator can be made accountable for succession duty in respect thereof:

- (a) Every person to whom such property, or any part thereof so passes for any beneficial interest in possession, and
- (b) Every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is vested, to the extent of the property actually received or disposed of by him, and
- (c) Every person in whom the property so passing, or any part thereof, is vested in possession by alienation or other derivative title, shall be accountable for the succession duty charged or imposed on such property, and shall within two

months after the death of the deceased, or such later time as the Treasurer allows, deliver to the Registrar a statement under oath to the best of his knowledge and belief, of such property, the value thereof, and the person or persons to whom the same passes, and their relationship to the deceased.

14. Transfer of Stock, etc., by Foreign Executor.—No foreign executor shall assign or transfer any bond, debenture, stock or share of any bank or other corporation whatsoever, having its head office in New Brunswick, standing in the name of the deceased person, or in trust for him until the duty, if any, is paid, or security is given as required by Section 12, and any such bank or corporation allowing a transfer of any debenture, bond, stock or share contrary to this section, shall be liable for such proportion of the duty payable in respect of the estate as the value of the debenture, bond, stock or share transferred bears to the property of the deceased within the Province.

15. (1) Inquiry by Judge of Probate.—In case the Treasurer is not satisfied with the value of any property as sworn to or with the correctness of any inventory, the Judge of Probate of the county in which the property, or any part thereof, subject to duty, is situate, shall, at the instance of the Treasurer, and upon such notice by personal or substitutional service to the executor or such interested parties as he by order directs the Registrar to give, enquire into the correctness of the inventory, and as to the value so sworn to, and value any property improperly omitted, fix and settle the amounts of the debts and other allowances and exemptions and assess the cash value of every annuity, term of years, life estate, income or other estate, and of every interest or expectancy as provided by this Act, and shall, at the time and place mentioned in the notice, or any other time and place named by him, value all property at the fair market value and hear and determine all questions relative to the liability of property and the amount of duty.

(2) The Judge of Probate shall have all the powers of a Judge of the Supreme Court at the trial of any action, and the power to compel discovery, the production of books, papers and documents, and he may appoint for the purpose of this Act a guardian of any infant who has no guardian.

(3) The judgment of the Judge of Probate shall have the like force and effect and be enforceable in the same manner as a judgment of the Supreme Court.

(4) In lieu of or in addition to evidence of valuation of property, the Judge of Probate may in the first instance, or at any time before judgment, and at the request of the Treasurer issue a direction to the sheriff of a county where any property is situate in respect to which duty is payable, or to some other competent person, to make any appraisal of the property mentioned in the inventory or any part thereof, or of any property wrongfully omitted.

(5) **Appraisal by Sheriff.**—When so directed the sheriff shall forthwith appraise the property mentioned in the inventory, or any part thereof, as directed by the Judge of Probate, or any property wrongfully omitted, at its fair market value, at the date of death, and make a report in writing to the Judge of Probate of his appraisal and of such other facts as he may deem proper.

(6) **Sheriff's Fees.**—The sheriff shall be paid the following fees for services performed under this Act:

\$1 for every hour up to five hours.

\$2 for every hour of important or difficult cases.

In no case to exceed \$10 per diem; his actual and necessary travelling expenses.

16. Determination of the Value of any Annuity, etc.—

The value of every annuity, term of years, life estate, income or other estate and of every interest in expectancy, in respect of which duty is payable under this Act, shall, for the purposes of this Act be determined by the rule, method and standards of mortality and of value to be fixed by an actuary to be named by the Treasurer; and the actuary shall, on the application of any Judge of Probate, determine the value of any annuity, term of years, life estate, income or other estate, or of any interest in expectancy upon the facts contained in any application, and certify the same to the Judge of Probate and his certificate shall be conclusive as to the matters dealt with therein.

17. Appeal by Treasurer to Supreme Court.—The Treasurer, or any other person interested, may within thirty days from the date of the judgment of the Judge of Probate, appeal to the Supreme Court whose decision shall be final, but no appeal shall lie unless that portion of the property or of the debts and other allowances and exemptions in respect of which such appeal is taken, or all combined, exceeds in value or amount \$10,000, according to such judgment.

18. Succession Duty, When Due.—The duty imposed by this Act, unless otherwise provided for, shall be due at the death of the deceased, and payable to the Treasurer within six months thereafter; and if the same is paid within six months, no interest shall be charged or collected thereon, but if not so paid, interest at the rate of five per cent. shall be charged and collected from the death of the deceased, and such duty, together with the interest thereon, shall be and remain a lien upon the property out of which it is payable, until the same shall be paid.

19. Reduction of Succession Duty in Certain Cases.—When it shall appear that property within the Province has passed to two or more persons successively, or that the interest of any person or persons therein shall be a future estate, and that by reason of the change in the law effected by this Act, or that by reason of any other circumstances there may be hardship or inconvenience in imposing the full amount of succession duty upon such estate, or in collecting the whole of such duty at one time, it shall be lawful for the Lieutenant-Governor-in-Council:

- (a) To reduce the amount of succession duty payable; or
- (b) To postpone the payment of the whole or any part of said duty to such time or times as may seem just and reasonable;
- (c) To agree with the several persons interested in said property, or any of them, for the charging of a portion or portions of the said duty upon their several interests therein.

20. (1) Personal Liability of Executor.—No executor or trustee shall in the first instance be personally liable to pay the

duty on any property to which any legatee, donee or other successor is beneficially entitled, but an executor, trustee or other person in whom any interest in any property so passing to any legatee, donee or other successor, or the management thereof, is at any time vested, shall not transfer such property to the person so entitled, without deducting therefrom the duty to which such property is liable, and any executor, trustee or other person who transfers such property without deducting the duty therefrom, shall pay to the Treasurer the amount of such duty in respect of such property and interest thereon, together with an additional rate of fifty per cent. of the duty payable in respect of such property, and such combined amounts shall be recoverable against the executor, trustee or other person so chargeable.

(2) Every sum of money retained by an executor or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Treasurer or to such person as he may direct.

(3) Such executor or trustee shall, for the purpose of the collection and payment of any duty which under the provisions of this Act it is his duty to collect and pay over to the Treasurer, be deemed an officer of the Province for the collection thereof.

21. Extension of Time for Payment.—The Treasurer may make an order upon the application of any person whose property, or any interest therein, is liable for the payment of said duty, extending the time fixed by law for the payment thereof, where it appears that payment within the time prescribed by this Act is impossible or unreasonable.

22. Power of Executors to Sell Property to Pay Duty.—Executors, administrators and trustees shall have the power to sell so much of the property of the deceased as will enable them to pay said duty, in the same manner as they may be enabled by law to do for payment of debts of the testator or intestate.

23. Refund to Legatee, Devisee, etc., in Certain Cases.—When any debts shall be proved against the estate of a deceased person, after the payment of legacies, or distribution of property, from which the said duty has been deducted, or upon which it has been paid, and a refund has been made by the legatee, devisee, heir or next of kin, a proportion of the duty paid in respect of said property shall be repaid to him by the executor, administrator or trustee, if the said duty has not been paid to the Treasurer or by the Treasurer, if it has been so paid.

24. Power of Judge of Probate to Enforce Payment—Proceedings.—If it appears to the Judge of Probate that any duty accruing under this Act has not been paid according to law, he shall make an order directing the persons interested in the property liable to the duty, to appear before the Court on a day certain, to be named therein, and show cause why said duty should not be paid. The service of such order and the time, manner and proof thereof, and the hearing and determining thereon, and the enforcement of the judgment of the Court thereon, shall be according to the practice in or upon the enforcement of a judgment of the Supreme Court.

25. Costs.—No costs shall be allowed in or by the Probate Court, except as herein otherwise provided, in respect of any of

the proceedings therein taken under this Act. In case of any appeal to the Supreme Court, the costs of appeal shall be according to the Supreme Court scale.

26. Duties of Registrar of Probates.—It shall be the duty of every Registrar of Probates to prepare and forward to the Attorney General, on or immediately after the second day of January and the second day of July in each year, a statement of all estates in which probate or letters of administration have been granted by the Judge of the Court of which he is such Registrar, in respect to which the accounts have not been finally passed in such Probate Court, showing the value of the estate as stated in the petition for probate or letters of administration, together with the names and residences of the next of kin, in cases of intestacy, and with the names and residences of the devisees or legatees in other cases, and also the amount to which each legatee or devisee is entitled as nearly as such Registrar is able to state the same; together with a statement as to whether the executor or administrator has complied with the provisions of this Act, and if not, in what particulars the same remain uncomplished with.

27. When Amount of Succession Duty Settled with the Treasurer of the Province.—It shall be lawful for the executors and trustees of the estates of deceased persons liable to succession duties under this Act, in cases where the Lieutenant-Governor-in-Council may consider it in the public interest, as well as just and equitable to the persons beneficially interested in the estate of such persons so to do, to agree to and with the Treasurer of the Province as to the amount to be paid to the said Treasurer as the succession duty upon any estate, and such amount so agreed upon shall be a first charge upon the estate of the deceased, and after payment of the same such executors or trustees shall administer the residue of such estate according to the provisions of the will in the case in which such settlement is made under this Act, as near as may be as if the estate of the deceased in such case had been less than it is by the amount of the duty paid under the terms of the settlement herein provided for.

28. Proceedings on Inquiry Under this Act.—Whenever there shall be doubts as to whether all the property and estate of any deceased person, or which such person had prior to his decease transferred, has been fully accounted for, inventoried or disclosed for the purposes of succession duty under The Succession Duty Act, 1892, The Succession Duty Act, 1896, Chapter 17 of "The Consolidated Statutes, 1903," or this Act, the Lieutenant-Governor-in-Council may, by Order-in-Council, authorize and direct an inquiry to be made for the purpose of ascertaining whether the whole of the property of any person subject to duty has been made known, and may duly commission any person (the fact that such person is a member or officer of the Provincial Government not being a disqualification for such appointment) to make such inquiry, and such commissioner so appointed shall be fully authorized and empowered to inquire:

- (a) Into the value, nature and particulars of all property of the deceased;
- (b) Into any and all transfers of any property which the commissioner may suspect of believe to have been transferred with intent to evade payment of duties under The Succession Duty Act, 1892, The Succession Duty Act, 1896.

Chapter 17 of the Consolidated Statutes, 1903, or this Act;

- (c) Into the relationship of any person interested in such property to the deceased person, and upon such inquiry to adjudge and determine;
- (d) What property, if any, has been transferred with intent to evade the payment of succession duty aforesaid, and what property is subject to duty;
- (e) What amount, if any, is payable as succession duty to the Crown in respect of any property whatever of the deceased, or of any property which has been by him, the said commissioner, adjudged to have been transferred to evade the duty, and the person from whom payment shall be made; and for the purpose of such enquiry and adjudication, and under and by virtue of the commission issued to him as aforesaid, the commissioner shall be and he is hereby invested with all the powers and authorities conferred upon a commissioner appointed under Chapter 12 of The Consolidated Statutes, 1903, providing for investigations by commission, and for certain departmental inquiries, or any Act in amendment thereof. In the case of any person dying after the passage of this Act, such Order-in-Council shall only be made within three years from the date of death; and in the case of persons heretofore deceased, shall only be made within three years from enactment hereof.

29. Witness Neglecting or Refusing to Obey Summons—Penalty \$100.—Any person summoned as a witness under the last preceding section, or in pursuance thereof, who shall neglect or refuse to obey the summons in all respects, shall, for each and every such neglect or refusal, incur a penalty of one hundred dollars, to be enforced on behalf of the Crown before any Court of competent jurisdiction.

30. (1) Double Duty in Case of Transfer to Evade Payment of Succession Duties.—Any person to whom a transfer has been or may be hereafter made, with intent of evading the payment of succession duties under The Succession Duty Act, 1892, The Succession Duty Act, 1896, Chapter 17 of the Consolidated Statutes, 1903, or this Act, or the estate and property of the person making such transfer, according as the same shall be adjudged and determined by the commissioner, shall be liable to the payment of double the amount of duty to which the property so transferred would have been subject if such transfer had not been made, and such double duty may be recovered, in addition to other remedies provided by this Act, or any other remedies allowed by law, by action brought on behalf of the Crown in the name of the Treasurer in any Court of competent jurisdiction, from the transferee of such property or from the estate of the deceased, as the case may be. In any such action proof that the commissioner had found such duty to be payable in respect of the property so transferred shall be conclusive evidence as to the fact of the transfer having been made to evade duty, and the Crown shall be entitled to judgment in such action, provided that the transferee, having received notice of the inquiry by the commissioner, and having an opportunity of being heard therein, had either not appeared, or having appeared, had not appealed against the commissioner's finding as hereinafter provided, or having taken his appeal, such appeal had been adjudged against him.

- (2) A transferee and the property may always escape liability

to such double duty if notice in writing of such voluntary transfer, or transfer without adequate consideration, be given to the Treasurer within a reasonable time thereafter, but failure to give such notice shall not raise any presumption against the transferee.

31. Appeal from Decision of Commissioner.—Any person against whom the commissioner renders decision imposing succession duty, or double duty, under The Succession Duty Act, 1892. The Succession Duty Act, 1896, Chapter 17 of the Consolidated Statutes, 1903, or this Act, may appeal to the Lieutenant-Governor-in-Council against the decision of the commissioner, but such appeal must be taken, and notice thereof given, with the grounds of such appeal, to the commissioner within thirty days after notice to such person of the decision of the commissioner; and it shall be the duty of the Lieutenant-Governor-in-Council to deal with such appeal upon equitable grounds, and the decision of the Lieutenant-Governor-in-Council shall be final and conclusive in all matters of fact therein determined.

32. No Judgment or Payment, etc., a Bar to Inquiry in the Manner Prescribed by this Act.—No judgment, order or decision by any Court or Judge, whether on appeal or otherwise, rendered in any estate, nor any payment to or acceptance by the Treasurer of succession duties in any estate, shall bar or preclude the Crown holding or causing the inquiry to be held in the foregoing section authorized, or the commissioner appointed by the Lieutenant-Governor-in-Council from holding such inquiry or adjudicating upon the matters therein inquired into, nor shall bar nor preclude the recovery by the Crown of any succession duties adjudged by the commissioner to be payable to the Treasurer in addition to any sums previously adjudged to be paid, or paid in respect of succession duties upon the property, or any part of the property of such estate.

33. Regulations by Order-in-Council.—The Lieutenant-Governor may, by Order-in-Council, make any regulations deemed expedient for carrying into effect the provisions of this Act, and shall duly publish the same in the Royal Gazette upon the making thereof.

34. Remuneration to Attorney-General for Services in the Collection of Succession Duties.—For his services and disbursements in connection with the collection of the duties payable under this Act, the Treasurer shall each year pay to the Attorney General, or other officer charged by the Government with the collection of the succession duties, such amount for such services and disbursements and as a commission on the collection of such duties as may be taxed and allowed by the Clerk of the Pleas, but not, however, to exceed five per cent. on the amount of succession duties paid to the Treasurer during such year.

35. This Act, When Applicable.—This Act and all the provisions hereof, shall be applicable to the case of any and all persons who have died since the passing of The Succession Duty Act, 1892, and to the estate and property of all and any such persons, but shall not affect any matters now in litigation or heretofore agreed to be litigated under the previous Acts, nor shall it affect estates on which the duty has been paid or fixed.

thereto the words "but this Act shall not apply to any estate the aggregate value of which does not exceed Five Thousand Dollars."

36. Repealing Section.—Chapter 17 of the Consolidated Statutes, 1903, Chapter 12 of 8 Edward VIII., and Chapter 41 of 3 George V., are and each of them is hereby repealed.

R. vs. Lovitt (1911), 10 E. L. R. 156; 4 D. L. R. 229.

Sec. 5, s.-s. 1, N. B. Act, 1896.

Special Deposit in Bank—Right to Succession duty in respect of Deposit when depositor domiciled abroad at time of death—*Mobilia sequuntur personam*.

Privy Council held, reversing 43 S. C. R. 106, that under the provisions of the Succession Duty Act (C. S. N. B. ch. 17) sec. 5, s.-s. 1, the Government of New Brunswick was entitled to the payment of Succession duty in respect of money specially deposited in a Bank within the Province, although the depositor at the time of making such deposit and at the time of his death was domiciled in the Province of Nova Scotia.

Rex vs. Lovitt (1912), 1 A. C.

Succession Duty Act, 1896, Sec. 1 (5).

Construction of—Locality of Simple Contract Debts—*Lex loci* and administration—*Lex domicilii* and distribution.

By New Brunswick Succession Duty Act, 1896, s. 1 (5), all property situate within the Province is liable to succession duty whether the deceased was domiciled there or not; such duty being assimilated by other provisions of the same Act to a probate duty payable for local administration. The testator, resident and domiciled in the Province of Nova Scotia, at the date of his death was possessed of \$90,351 deposited in the New Brunswick branch of the Bank of British North America, the head office of which is in London; and the amount was paid to his executors after they had obtained ancillary probate in New Brunswick:—Privy Council held that the executors were liable to pay succession duty. The property consisted of simple contract debts, the obligation to pay being primarily confined to the New Brunswick branch of the bank, and these debts for the purpose of legal representation, of collection, and of administration as distinguished from distribution are governed by the law of New Brunswick where they were locally situated.—Judgment of Supreme Court of Canada, 43 S. C. R. 106 reversed; Judgment of Supreme Court of N. B., 37 N. B. R. 558 restored.

FORM 1.

Affidavit of Value and Relationship.

This affidavit is to be made by all persons applying for Letters Probate, or of Administration, or other grant, or on filing an account.

THE SUCCESSION DUTY ACT.

(New Brunswick).

Canada, Province of New Brunswick.

In the Probate Court.

In the matter of the estate of

late of the

of _____, in the _____ of _____, deceased.
I, _____, make oath and say:—

That _____, a _____, the applicant for letters of
_____ , who died on or about the _____ day of _____,
A. D. 191 _____, domiciled in _____.

That _____ have caused to be filed in the office of the
Registrar of the above named Court a petition praying that letters
be granted _____ of the said deceased by the said
Court.

That _____ have made full, careful and searching inquiry
for the purpose of ascertaining what real and personal property
and effects the said deceased was possessed of or entitled to at the
time of h _____ death, together with the fair market value thereof
respectively.

That _____ have according to the best of
knowledge, information and belief set forth in the inventory here-
with exhibited, marked "A," a full, true and particular account of
all the real and personal estate of the said deceased or of which
he was possessed, or to which _____ he was
entitled in possession or reversion absolutely or contingently or
otherwise howsoever at the time of h _____ death, or of which the
deceased was competent to dispose, or over which _____ he
had a general power of appointment, together with the fair market
value as at the date of death, of each and every asset forming part
of the said real and personal estate and particularized in the said
inventory. The gross value of the estate wherever situate as at
date of death of deceased was \$ _____

That _____ have included in the said inventory every
security, debt and sum of money outstanding due, or payable to,
or standing to the credit of the said deceased at the time of h
death, and in estimating the value thereof have included all the
interest due, payable, chargeable and accruing due thereon up to
the death of the said deceased.

That _____ in the said inventory is included all the pro-
perty of the said deceased situate out of New Brunswick as well
as the property situate in New Brunswick.

That to the best of _____ knowledge, information and belief,
the said deceased did not voluntarily transfer by deed, grant or
gift, made in contemplation of h _____ death, or made, or intended to
take effect in possession or enjoyment after h _____ death, any pro-
perty or any interest therein, or income therefrom, to any person
come beneficially entitled in possession or expectancy in or to the
said property, or income thereof (except the property set out in
the schedule marked exhibit "B").

That to the best of _____ knowledge, information and belief,
the said deceased did not at any time transfer to any person any
property whatsoever by way of *donatio mortis causa*, nor did he
since the seventh day of April, 1892, make any disposition of pro-
perty operating or purporting to operate as an immediate gift *inter*
vivos, whether by way of transfer, delivery, declaration of trust,
or otherwise, except the property set out in the schedule marked
exhibit "B", and the fair market value of such property or the
amount thereof, the person or persons to whom it was given, their
addresses, the relationship in which they stand to the deceased, and
the dates when so given, are therein correctly set out.

That to the best of knowledge, information and belief, the said deceased did not transfer or cause to be transferred to, or vested in, h self and any other person jointly any property to which was absolutely entitled, so that the beneficial interest therein, or in some part thereof, passed or accrued by survivorship on h death to such other person, nor did make or effect, or cause to be made or effected, either by h self alone, or in concert, or by arrangement with any other person, any purchase or investment of property whatsoever for any other purpose, or in trust for h , except as set out in the said inventory.

That to the best of knowledge, information and belief, the said deceased was not at the time of h death a party to any past or future settlement, including any trust, whether expressed in writing or otherwise, whether made for valuable consideration or not, as between the settlor and any other person, and not taking effect as a will, whereby an interest in such property or the proceeds of the sale thereof for life, or any other period determinable by reference to death, was reserved expressly or by implication to the deceased, or whereby the deceased reserved to h self the right by the exercise of any power to restore to h self or to reclaim the absolute interest in such property or the proceeds of the sale thereof, except as set out in the said inventory.

That to the best of knowledge, information and belief, no annuity policy or insurance, or other interest had been purchased or provided by the said deceased, whether by h self alone, or in concert, or by arrangement with any other person, except as set out in the said inventory.

That have in the schedule marked exhibit "C" set forth the names of the several persons to whom the property of the said deceased will pass, the degrees of relationship, if any, in which they stand to the deceased, their addresses so far as can ascertain them, and the nature and value of the property passing to each of these persons respectively, and that the several persons who receive annuities or estates for life or bequests of income were on their last birthday previous to the date of deceased's death, the ages respectively set opposite their names.

Sworn before me at the of in the County
of , this day of A. D. 191 .

.....
A Commissioner, etc., or Notary Public, etc.

This affidavit to be filed on behalf of the applicant by

.....
Solicitor.

SCHEDULE A.

Shewing an Inventory in detail of Property,
Wheresoever Situate.

In the Probate Court.

In the matter of the estate , deceased, late of
the of in the County of .

THE SUCCESSION DUTY ACT, (New Brunswick).

REAL ESTATE. Give short description of each parcel or lot with dimensions for purposes of identification.	Fair Market Value of Pro- perty exclusive of liens and encumbrances.
	<div>\$</div> <div>c.</div>
Total	

Moneys Secured by Mortgage.

	Name of Mortgagor.	Short Description of Land.	Other particulars including dates, principal, payments on account, rate of interest and date from which interest has been accruing to date of death.	Principal.		Interest.		Total.	
				\$	c.	\$	c.	\$	c.
			Total						

Book Debts and Promissory Notes, Etc.

Name of Debtor or Payer.	Address (City, Town or Province).	Particulars including date due principal, payments on account, rate of interest and date from which interest has been accruing to date of death.	Principal.		Interest.		Total.	
			\$	c.	\$	c.	\$	c.
		Total						

Securities for Money, including Life Insurance and Cash on Hand in Bank. (See note below).

Name of Company or otherwise.	Head Office of Company or residence of persons (whether in New Brunswick or elsewhere).	Other particulars as above and if owned by a non-resident where registered.	Principal.	Interest.	Total.
			\$ c.	\$ c.	\$ c.
		Total			

Bank Stocks and Other Stocks.

No. of Shares.	Full Name of Company.	Head Office (New Brunswick or elsewhere).	Kind of Stock, Common or Preferred.	Amount Paid Up.	Par Value.	Fair Market Value.
				\$ c.	\$ c.	\$ c.
			Total			

Miscellaneous Assets Not Hereinbefore Mentioned, If Any.	Fair Market Value.
Give full particulars here—	\$ c.
Household Goods and Furniture	
Pictures, Plate and Jewelry	
Stock-in-Trade of Business or Industrial Concern	
Any other Property	
NOTE.—State fully if bonds, debentures and other securities owned by a foreign descendent are in his possession elsewhere than in New Brunswick and are actually listed on a register out of New Brunswick, where a transfer can be made without any Act being required at the head office in New Brunswick.	
Total	

Summary.

	Principal or Market Value.		Interest.		Total.	
	\$	c.	\$	c.	\$	c.
Real Estate.....						
Moneys secured by Mortgage.....						
Book Debts and Promissory Notes.....						
Securities for Money, including Life Insurance and Cash in Bank and on Hand.....						
Bank Stocks and other Stocks.....						
Miscellaneous Assets not hereinbefore mentioned....						

This is exhibit "A" referred to in the affidavit of value and relationship of

Sworn before me on the day of , A. D. 19 .

.....
A Commissioner, etc., or Notary Public, etc.

SCHEDULE "B"

In the Probate Court.

In the matter of the estate of , deceased, late of
the of in the County of

THE SUCCESSION DUTY ACT,
(New Brunswick).

Date of Gift or Statement	Name of Donee or Trustees, if any.	Address.	Trace relationship to Deceased.	Nature of Gift or Property Given.	Amount of Gift or Fair Market Value of Property.	Any other Facts relating to Gift.

This is Exhibit "B" referred to in the affidavit of value and relationship of

Sworn before me on the day of , A. D. 19 .

.....

A Commissioner, etc., or Notary Public, etc.

SCHEDULE "C".

In the Probate Court.

THE SUCCESSION DUTY ACT,
(New Brunswick).In the matter of the estate of , deceased, late of
the of in the County of

Name of Legatee.	Relationship.	Address.	Age last birthday of Life Tenant or Annuitant.	Nature of Bequest of Property Passing.	Value.

This is Exhibit "C" referred to in the affidavit of value and
relationship of

Sworn before me on the day of , A. D. 19 .

.....
A Commissioner, etc., or Notary Public, etc.

CHAPTER 13.

NOVA SCOTIA

An Act to Amend and Consolidate the Acts relating to Succession Duty.

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Be it enacted by the Governor, Council, and Assembly, as follows:

1. Short Title.—This Act may be cited as "The Succession Duty Act, 1912."

2. Duty to be Levied.—For the purpose of raising a revenue for provincial purposes, save as is hereafter otherwise expressly provided, there shall be levied and paid for the use of the province, a duty at the rates hereinafter mentioned upon all property (See *Re Estate Cronan*, Nova Scotia Reports, vol. 27, pp. 436) which has passed on the death of any person who has died on or since the 1st day of July, 1892, or passing on the death of any person who shall hereafter die, according to the fair market value of such property at the date of the death of such person.

3. (1) Interpretation.—Where the following words and ex-

pressions occur in this Act, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears:—

- (a) The words “passing on the death” mean passing either immediately on the death or after an interval either certainly or contingently and either originally or by way of substitutive limitation, whether the deceased was at the time of his death domiciled in Nova Scotia or elsewhere.
- (b) “Property” includes real and personal property of every description and every estate and interest therein, capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives;
- (c) “Interest in expectancy” includes an estate, income or interest in remainder or reversion and any other future interest, whether vested or contingent, but shall not include a reversion expectant on the determination of a lease;
- (d) “Executor” includes administrator, trustee, guardian, committee or other person seized or possessed of or entitled to any property in a fiduciary capacity;
- (e) “Treasurer” means the Provincial Treasurer of Nova Scotia;
- (f) The word “child” means any lawful child of the deceased or any lineal descendant of such child born in lawful wedlock, or any person adopted while under the age of twelve years by the deceased as his child, or any infant to whom the deceased as his child, or any infant to whom the deceased, for not less than five years immediately preceding his death, stood in *loco parentis*, or any lineal descendant of such adopted child or infant as aforesaid, born in lawful wedlock;
- (g) The words “aggregate value” mean the fair market value of the property after the debts, encumbrances and other allowances authorized by section 4 of this Act are deducted therefrom, and for the purposes of determining aggregate value and the rate of duty payable, the value of property situate out of Nova Scotia, shall be included;
- (h) The words “dutiable value” mean the value of the property after the debts, encumbrances and other allowances and exemptions authorized by this Act are deducted therefrom.

4. “Dutiable Value.”—In determining “dutiable value,” the value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses, debts and encumbrances and Probate Court fees, not including solicitor’s charges, and any debt or encumbrance for which an allowance is made shall be deducted from the value of the land or other subject of property liable therefor; but an allowance shall not be made—

- (a) for any debts incurred by the deceased or encumbrances created by a disposition made by him, unless such debts or encumbrances were created *bona fide* for full consideration in money or money’s worth, wholly for the deceased’s own use and benefit and to take effect out of his estate; nor
- (b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained; nor

- (c) more than once for the same debt or encumbrance charged upon different portions of the estate; nor
- (d) save as aforesaid, for the expense of administration of the estate or the execution of any trust created by the will of the deceased, or by any instrument made by him in his lifetime.

5. When Duty Not Leviable.—No duty shall be leviable—

(1) On any estate, the aggregate value of which does not exceed five thousand dollars.

(2) On property devised or bequeathed for religious, charitable or educational purposes to be carried out in Nova Scotia, or by a corporation or a person resident in Nova Scotia, or on the account of any unpaid subscription for any like purpose made by any person in his lifetime to any corporation or person mentioned in this subsection for which his estate is liable.

(3) On property passing by will, intestacy or otherwise, to or for the use of a grandfather, grandmother, father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased, where the value of the property of the deceased does not exceed twenty-five thousand dollars.

(4) On any moneys received under a contract of insurance effected by any person on his life, payable to any of the persons mentioned in sub-section 3 of this section, when the aggregate of such insurance or insurances does not exceed five thousand dollars.

(5) Where the whole value of any property passing to any one person does not exceed five hundred dollars.

6. Property Subject to Duty.—The following property, as well as all other property subject to succession duty, shall be subject to duty at the rates hereinafter imposed:

(1) All property situate in Nova Scotia, and any income therefrom passing on the death of any person, whether the deceased was at the time of his death domiciled in Nova Scotia or elsewhere.

(2) Debts and sums of money due and owing from persons in Nova Scotia to any deceased person at the time of his death, on obligation or other specialty, shall be property of the deceased situate in Nova Scotia without regard to the place where the obligation or specialty shall be at the time of the death of the deceased.

(3) Property passing on the death of the deceased shall be deemed to include for all purposes of this Act the following property:

(a) Any property or income therefrom voluntarily transferred by deed, grant, bargain sale or gift, made in contemplation of the death of the grantor, bargainor, vendor or donor, or made or intended to take effect in possession or enjoyment after such death, to any person in trust or otherwise, or the effect of which is that any person becomes beneficially entitled in possession or expectancy to such property or income;

(b) Any property taken as a *donatio mortis causa* or taken under a disposition purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bona fide* made twelve months before the death of the de-

ceased, or property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donor immediately upon the gift and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise;

- (c) Any property passing under any disposition, whether made or taking effect before or after the coming into force of this Act, whereby any person becomes beneficially entitled to such property or part thereof, or the income therefrom or from part thereof, upon the death of any other person, or at a time ascertainable only by reference to the death of any other person, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitution;
- (d) Any property which a person having been absolutely entitled thereto, has caused or may cause to be transferred to, or vested in himself and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof, passes or accrues by survivorship on his death to such other person, including also any purchase or investment effected by the person who was absolutely entitled to the property, either by himself alone or in concert, or by arrangement with any other person;
- (e) Any property passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument affecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settler and any other person, made by deed or other instrument not taking effect by a will, whereby an interest in such property or the proceeds of sales thereof for life or any other period determinable by reference to death, is reserved, either expressly or by implication to the settler, or whereby the settler may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property or the proceeds of sale thereof, or to otherwise resettle the same or any part thereof;
- (f) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased;
- (g) Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of any existing or future donee, whether nominee or assignee, or for any person who may become a donee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit;
- (h) Any property of which the person dying was at the time of his death competent to dispose, and a person shall be deemed competent to dispose of property if he has such an estate or interest therein of such general power as would if he were *sui juris* enable him to dispose of the property as he thinks fit, whether the power is exercisable

by instrument *inter vivos* or by will or both, exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying, shall be deemed to have been made by him, whether concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose;

- (i) Any estate in dower or by the courtesy in any land of the person so dying of which the wife or husband of the deceased becomes entitled on the decease of such person.

(4) Nothing in this Act shall render liable for duty any property *bona fide* transferred for a consideration in money or money's worth paid to the vendor or grantor for his own use and benefit, except to the extent, if any, to which the value of the property transferred exceeds that of the consideration so paid.

7. Duty When Property in Various Cases Exceeds Certain Sums.—(1) Where the aggregate value of the property passing as aforesaid exceeds twenty-five thousand dollars, and passes in manner aforesaid, either in whole or in part, to or for the benefit of the father, mother, husband, wife, child, grandchild, great-grandchild, daughter-in-law or son-in-law of the deceased, the same, or so much thereof as so passes, shall be subject to a duty of two dollars and fifty cents for every one hundred dollars of the value.

(2) When such value exceeds one hundred thousand dollars, the whole property which passes as in the next preceding sub-section mentioned shall be subject to a duty of five dollars for every one hundred dollars of the value.

(3) When such value exceeds five thousand dollars, so much thereof as passes to or for the benefit of the grandfather or grandmother or any other lineal ancestor of the deceased, except the father and mother, or to or for any brother or sister of the deceased, or to any child or grandchild of such brother or sister, or to the brother or sister of the father or mother of the deceased, or any child or grandchild of such last mentioned brother or sister, shall be subject to a duty of five dollars for every one hundred dollars of value.

(4) When such value exceeds five thousand dollars, and any part thereof passes to or for the benefit of any person in any other degree of consanguinity to the deceased than is in this section mentioned, or to or for the benefit of any stranger in blood to the deceased, save as in this Chapter provided, the same shall be subject to a duty of ten dollars for every one hundred dollars of the value.

(5) Provided that when the whole value of any property devised, bequeathed or passing to any one person by a will or intestacy does not exceed five hundred dollars, the same shall be exempt from payment of the duty imposed by this section.

8. Devise in Lieu of Commissions.—Where a bequest or devise of property which otherwise would be liable to the payment of duty under this Chapter is made to an executor or trustee in lieu of commissions or allowance, and such bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess only shall be liable to duty, and the judge having jurisdiction in the case shall fix such compensation.

9. Duty Payable When Deceased Domiciled Outside of Province.—Any portion of the estate of any deceased person, whether at the time of his death such person was domiciled in Nova Scotia or elsewhere, which is brought into this Province to be administered or distributed, shall be liable to the duty in this Chapter imposed; but if any succession legacy or death duty or tax has been paid on such property elsewhere than in Nova Scotia, and such duty or tax is equal to or greater than the duty payable on property in this Province, no duty shall be payable thereon, and if the duty or tax so paid elsewhere is less than the duty payable on property in this Province, then on the property upon which such duty or tax has been paid elsewhere, only the difference between the duty payable under this Chapter and the duty or tax so paid elsewhere, shall be payable.

10. Foreign Executor Not to Sign Transfer.—No foreign executor shall assign or transfer any bond, debenture, stock or share of any bank or other corporation whatsoever, having its head office in Nova Scotia, standing in the name of the deceased person, or in trust for him, until the duty, if any, is paid, and any such bank or corporation allowing to be registered a transfer of any bond, debenture, stock or share contrary to this section, shall be liable for such duty.

11. Statement to be Filed by Executor or Administration.—(1) The executor or administrator of the estate of a deceased person shall, if such estate is liable to succession duty, under the provisions of this Chapter, on or before exhibiting and filing the inventory in the Court of Probate, make out and file with the registrar, for the purpose of ascertaining the succession duty, a true and correct statement under oath showing:

- (a) a full itemized statement of all the property of the deceased person and the market value thereof, and
- (b) the several persons to whom such property will pass under the will or intestacy, the degree of relationship, if any, in which they stand to the deceased, and the age, address and occupation of each of them.

(2) When property passes on the death of any person, and no executor or administrator can be made accountable for succession duty in respect thereof—

- (a) every person to whom such property or any part thereof so passes for any beneficial interest in possession, and
- (b) every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is vested, to the extent of the property actually received or disposed of by him, and
- (c) every person in whom the property so passing, or any part thereof, is vested in possession by alienation or other derivative title, shall be accountable for the succession duty on such property, and shall within two months after the death of the deceased, or such later time as the Treasurer allows, deliver to the registrar a statement under oath to the best of his knowledge and belief of such property, the value thereof, and the person or persons to whom the same passes, and their relationship to the deceased.

RE-VALUATION.

12. Appraisement may be Investigated.—If the Provincial Treasurer is not satisfied with the appraisement of the property of the deceased, or with the correctness of the inventory thereof, the registrar shall, at the instance of the Treasurer, his solicitor or agent, direct in writing that a valuator, appointed by the Treasurer, shall investigate into the correctness of such inventory and appraisement.

13. Proceedings of Valuator Under Directions of the Registrar.—(1) The valuator so appointed by the Treasurer shall, upon being directed by the registrar, forthwith—

- (a) give notice by registered letter to the executor or administrator, and to such other persons as the registrar directs, of the time and place at which he will hold such investigation and appraise such property;
- (b) examine such inventory and the property therein enumerated and the appraisement thereof and the correctness of the same;
- (c) make full investigation at the time and place fixed therefor into the correctness of such inventory and valuation;
- (d) amend, alter, add to or take away from such inventory and valuation, as to him appears just and proper, and if necessary make a new inventory appraisement;
- (e) at the conclusion of such investigation, report in writing without delay to the registrar as to the value of the property and such other matters as the registrar requires.

(2) For the purpose of such investigation the valuator may summon witnesses and require them to give evidence on oath or affirmation, orally or in writing, and to produce such documents and things as he deems requisite for such investigation.

(3) The valuator shall be entitled to receive the sum of five dollars per day for services performed under this section, and his actual and necessary travelling expenses, and the same shall be paid to him by the Treasurer.

ACCOUNTANT'S CERTIFICATE.

14. Accountant's Certificate.—(1) The registrar shall, upon receiving the inventory and appraisement from the executor or administrator, unless a valuator is directed to re-value, and in such case, upon receiving the report of the valuator, prepare a statement of facts necessary to determine the value of all estates, interests, incomes, annuities, life estates or terms of years subject to duty under the provisions of this Chapter, and shall mail the same, postage prepaid and registered, to an accountant to be named by the Treasurer, and such accountant shall forthwith proceed to assess and fix the value of such interests, income, annuities and contingent or limited estates, and shall certify the same to the registrar, and his certificates shall be conclusive as to the matters dealt with therein.

(2) The rate of interest to be taken for the purpose of computing the present value of such interests, income, annuities and future contingent or limited estates, shall be four per cent.

WHEN DUTY PAYABLE.

15. Time for Payment of Duty.—(1) The succession duties imposed by this Chapter shall (unless otherwise herein provided for) be due and payable at the death of the deceased, or within eighteen months thereafter, and if the same are paid within eighteen months, no interest shall be charged or collected thereon, but if not so paid, interest at the rate of six per centum per annum shall be charged and collected from the death of the deceased.

(2) The Treasurer is hereby authorized and empowered to allow a rebate of not more than five per cent. on the whole or any portion of any succession duties paid within six months from the date of the death of the deceased.

16. Payment Upon Annuity.—The duty payable in respect to an annuity shall be paid in four equal payments, the first of which payments shall be made before or on completing the payment of the first year's annuity, and the three others of such payments shall be made in like manner successively before or on completing the respective payments of the three succeeding years' annuity respectively; provided always that if such annuity determines by the death of any person or other contingency before such payments have been completed, no further duty shall be payable in respect to such annuity.

17. Provisions as to Property Devised in Succession.—Where any property is devised, bequeathed, descends or is transferred or given to or for the benefit of, or so that the same shall be enjoyed by different persons in succession; all persons who under or in consequence of such devise, bequest, descent, transfer or gift are entitled for life only or to any other temporary interest, shall be chargeable with duty in respect thereto as if the annual produce thereof had been given by way of annuity, and the said duty shall be payable when such persons respectively become entitled to and begin to receive such produce, and at the times and in the instalments in the last preceding section provided as to annuities; and all and every person who becomes absolutely entitled to any such devise, bequest, descent, transfer or gift, so to be enjoyed in succession, shall, when and as such person or persons respectively receives the same, or begins to enjoy the benefit thereof, be chargeable with and pay the duty for the same or such part thereof as is so received, or of which the benefit is so enjoyed, in the same manner as if the same had come to such person or persons immediately on the death of the person by whom such property has been given to be enjoyed or in such manner that the same shall be enjoyed in succession.

18. Commutation of Duty.—Notwithstanding that the duty is not under the next preceding section payable until the time when the right of possession or actual enjoyment occurs, any executor, administrator, trustee or guardian, having the custody or control of the property, and any person entitled to any future estate or interest, may commute, for a present payment, the duty which would or might but for the commutation become payable in respect to such future estate or interest, and the Treasurer may receive such present payment in full discharge of such duty; and for determining the amount of such present payment, a present value shall be set upon such duty, regard being had to the contingencies affecting the liability to and the rate and amount of such duty and interest.

ENFORCING PAYMENT OF DUTY.

19. Duty a First Charge.—The duty imposed by this Chapter shall be a first charge on the interest of any person chargeable with said duty, and of all persons claiming in his right in all the real property in respect whereof such duty is imposed, and such duty shall also be a first charge on the interest of any person chargeable with said duty in the personal property in respect whereof the same is imposed, while the same remains in the ownership or control of such person, or of any trustee, guardian or husband of such person, and such duty shall be payable by the person receiving the property in respect whereof the same is imposed.

20. Accountability to Treasurer.—(1) The following persons in addition to the person receiving the property subject to duty shall be personally accountable to the Treasurer for the duty payable in respect to such property, but to the extent only of the property or funds actually received or disposed of by them respectively; that is to say, every executor, administrator, trustee, guardian or husband in whom respectively any property or the management of any property subject to such duty is vested.

(2) Every such executor, administrator, trustee, guardian or husband shall retain out of the property subject to any such duty, the amount thereof, or collect the duty thereon, and shall not deliver any property subject to duty until such duty has been paid.

21. Sale Subjected to Duty.—Executors, administrators and trustees shall have power to sell so much of the property subject to duty as will enable them to pay such duty in the same manner as they are entitled by law to sell for the payment of debts of the testator or intestate, or in cases of a trustee as if the instrument creating the trust contained a power of sale for the satisfaction of such duty.

22. Payment to Treasurer.—Every sum of money retained by an executor, administrator or trustee, or paid into his hands for the duty of any property, shall be forthwith paid by him to the Treasurer.

23. Repayment of Duty in Certain Cases.—When any debts are proved against the estate of a deceased person, after the payment of legacies or distribution of the property from which the duty has been deducted, or upon which it has been paid, and a refund has been made by the legatee, devisee, heir or next-of-kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee if the said duty has not been paid to the Treasurer, or by the Treasurer if it has been so paid.

24. Citation, etc., for Non-Payment.—If it appears to the Judge of the Court of Probate on the application of any person interested that any duty payable under this Chapter has not been paid according to law, such Judge shall cite the person or persons interested in the property liable to the duty to appear on a day certain, to be named, and show cause why such duty should not be paid. Such citation shall be served personally or by registered letter ten clear days before the day named in such citation. The Judge, upon being satisfied that such citation has been duly served, may hear and determine all questions respecting such duty and the person or persons liable therefor, and may make an order directing the person or persons liable to pay the same to make

payment thereof to the Treasurer forthwith, or within such reasonable time as appears proper to the Judge. Such order may be enforced by execution in the same manner, as nearly as possible, as a decree for the payment of costs under "The Probate Act." Where there is no Judge of the Court of Probate residing in a county, such application may be made to the registrar of such Court, and the registrar shall, upon such application, have and exercise all the powers as to the hearing of such application and as to the making orders therein which are hereinbefore conferred upon the Judge of the Court of Probate.

25. Appeals.—The provisions of "The Probate Act" in respect to appeals to the Supreme Court shall be applicable to any order made by the Judge of the Court of Probate or the registrar thereof under the next preceding section.

26. Costs.—The costs of all proceedings under the next two preceding sections, shall be in the discretion of the court or judge or registrar, and shall be according to the scale of fees in the Court of Probate, except the costs of appeals to the Supreme Court, which shall be according to the scale of Supreme Court fees.

27. Bond of Registrar.—Every registrar, before entering on the duties of his office, shall deliver to the Treasurer a bond or other security or securities, in such sum and with such sufficient surety or sureties as are approved of by the Governor-in-Council, for the due and punctual performance of the duties imposed upon such registrar by this Chapter, and that he will not receive any duty payable under this Chapter.

28. Returns of Registrar.—The registrar shall make quarterly returns to the Treasurer, showing the following facts:

- (a) the name and address of every executor and administrator to whom probate letters of administration have been granted, the date of granting the same, and the name of the deceased person to whose estate the same relate;
- (b) the date of the filing of every inventory, together with the amount of the appraised value of the property therein;
- (c) a copy of every statement filed with him under the provisions of this Chapter;
- (d) every valuation and appraisal by any valuator appointed by the Treasurer;
- (e) a statement of every assessment by the registrar of the duty payable upon the cash value of property liable to duty;
- (f) a statement showing what appeals have been taken under the provisions of this Chapter, and what appeals have been decided, with the results of the same.

29. Fee of Registrar.—The registrar shall be paid for such return such fee as is fixed by the Governor-in-Council.

30. Fees of Judges of Probate and Registrars.—The Judges of Probate and the registrars of the several courts of probate shall be entitled to take for the performance of duties and services under this Chapter, similar fees to those payable to them under the Chapter "Of Costs and Fees."

31. Regulations by Governor-in-Council.—The Governor-in-Council may make regulations for carrying into effect the provisions

of this Chapter, and such regulations shall be laid before the House of Assembly forthwith, if the House is in session at the date of such regulations, and if the House is not in session, such regulations shall be laid before the House within the first seven days of the session next after such regulations are made.

32. Declaration of Law.—This Act shall be deemed to declare and be the law relating to succession duty on and since the first day of May, 1892, but shall not affect estates on which the duty has been paid or fixed.

33. Repeal.—Chapter 14 of the Revised Statutes, 1900, and Chapter 33 of the Acts of 1901, are hereby repealed.

SUCCESSION ACT OF NOVA SCOTIA, 1913.

An Act to Amend Chapter 13, Acts of 1912, entitled: “An Act to Amend and Consolidate the Acts relating to Succession Duty.”

(Passed the 13th day of May, A. D., 1913.)

Section 1. Sub-section added to Section 5 of Chapter 13, 1912. Be it enacted by the Governor, Council and Assembly, as follows:—

1. Section 5 of Chapter 13 of the Acts of 1912, entitled: “An Act to Amend and Consolidate the Acts Relating to Succession Duty,” is amended by adding thereto the following sub-section:

(6) On property situate in the United Kingdom of Great Britain and Ireland, and subject to estate duty there, and for the purpose of this section, the local situation in the United Kingdom of any property shall be determined in accordance with the law of England, with regard to the local situation of property within the meaning of section twenty of “The Finance Act,” 1894 (Imperial).

2. Sub-section (3) of Section 5 of said Chapter 13, is amended by inserting the word “aggregate” before the word “value” in the fourth line of said sub-section.”

SUCCESSION ACT OF NOVA SCOTIA, 1915.

CHAPTER 14—SECTION 30.

Succession Duty Act Amended.

Clause (b) of sub-section 3 of section 6 of chapter 13 of the Acts of 1912 is amended by striking out the word “donor” in the tenth line thereof and substituting therefor the word “donee.”

CHAPTER 36.

An Act to Amend Chapter 13, Act of 1912, "The Succession Duty Act, 1912."

(Passed the 15th day of April, A. D., 1915.)

	Section.
Clause (h), section 3, Chapter 13, Acts 1912, repealed; another substituted	1
Dutiable value	(h)
Registrar	(i)
Clause 3, section 5, said Act, repealed; another substituted . .	2
Where property does not exceed \$25,000.00	(3)
Section 7 said Act repealed; another substituted	3
Duty when property in certain cases exceeds certain sums; also when property passes to certain classes	(7)
Sub-section added to section 14	4
Duty registrar	(3)
Appeal	(4)

Be it enacted by the Governor, Council and Assembly, as follows:—

1. Clause (h) of Section 3 of the Succession Duty Act, 1912, being Chapter 13 of the Acts of 1912, is repealed, and the following are substituted therefor:—

- (h) the words "dutiable value" mean the value of the property subject to duty;
- (i) "registrar" means the registrar of probate for the county or district in which probate or letters of administration have been granted to the representatives of the deceased.

2. Clause 3 or Section 5 of said Act as amended by Chapter 57 of the Acts of 1913, is repealed, and the following substituted therefor:—

(3) On property passing by will, intestacy or otherwise to or for the benefit of the grandfather, grandmother, father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, if the aggregate value of the property of the deceased does not exceed twenty-five thousand dollars.

3. Section 7 of said Act is repealed and the following substituted therefor:—

7. (1) If the property subject to duty passes on the death of any person, either in whole or in part, to or for the benefit of the grandfather, grandmother, father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of the deceased, the same or as much thereof as so passes shall be subject to duty as follows:

- (a) If the aggregate value of the whole property passing on the death of such person exceeds Twenty-five Thousand Dollars, but does not exceed One Hundred Thousand Dollars—to a duty at the rate of Two Dollars and Fifty Cents for every One Hundred Dollars of the dutiable value;
- (b) If such aggregate value exceeds One Hundred Thousand Dollars—to a duty at the rate of Five Dollars for every One Hundred Dollars of the dutiable value.

(2) If the property subject to duty passes on the death of any person, either in whole or in part, to or for the benefit of—

- (a) any lineal ancestor or descendant of the deceased, except those mentioned in the next preceding sub-section; or
- (b) any brother or sister of the deceased; or
- (c) any child or grandchild of such brother or sister; or
- (d) any brother or sister of the father or mother of the deceased; or
- (e) any child or grandchild of such last mentioned brother or sister,

the same, or as much thereof as so passes, shall, if the aggregate value of the whole property passing on the death of such person exceeds Five Thousand Dollars, be subject to a duty at the rate of Five Dollars for every One Hundred Dollars of the dutiable value.

(3) If the property subject to duty passes on the death of any person, either in whole or in part, to or for the benefit of—

- (a) any person in any other degree of consanguinity to the deceased than is in this section mentioned; or
- (b) any stranger in blood to the deceased, the same or as much thereof as so passes, shall, if the aggregate value of the whole property passing on the death of such person exceeds Five Thousand Dollars, be subject, save as in this Act provided, to a duty at the rate of Ten Dollars for every One Hundred Dollars of the dutiable value.

(4) Provided that if the whole value of any property devised, bequeathed, or passing to any one person by a will or intestacy, does not exceed Five Hundred Dollars, the same shall be exempt from payment of the duty imposed by this section.

4. Section 14 of said Act is amended by adding thereto the following sub-sections:—

(3) The Registrar shall, upon receiving the accountant's certificate, proceed to ascertain and fix the duty payable under the provisions of this Chapter, and shall by registered letter immediately give notice thereof, and of the accountant's valuation, to all persons known to be interested therein.

(4) Any person who is dissatisfied with—

- (a) the valuation made under this Chapter; or
- (b) the amount of duty ascertained and fixed by the Registrar under the provisions of the next preceding sub-section,

may within thirty days after the receipt of the said notice given by the Registrar, and upon giving security approved by the Judge to pay all costs, appeal therefrom to the Judge of the Court of Probate, or if there is no Judge of Probate for the Probate District, to the Judge discharging under the provisions of the Probate Act the duties of the office of Judge of Probate for such district. Upon such appeal the Judge shall have jurisdiction to hear and determine the matter of such appeal and respecting the costs thereof, and to direct for the purpose of such appeal any inquiry, valuation, or report to be made by any officer of the Court or other person, and the decision of the Judge shall be subject to a further appeal to a Judge of the Supreme Court, who shall have similar powers and whose decision shall be final. The procedure and practice governing

appeals from the decision of a Judge of Probate from time to time in force shall govern such appeal to the Judge of the Supreme Court.

NOTES ON LAW OF SUCCESSION DUTY IN NOVA SCOTIA.

1. Income of Life Estate Liable.— D. C. by his will bequeathed certain portions of his estate, in trust to pay the income to certain persons mentioned, for life, and thereafter the principal to be distributed among certain other persons.

The question was whether the life interest was liable to the payment of the succession duties fixed by statute.

Held, that the income for life was within the definition of the word "property" in sec. 2, and as such was liable to the payment of duty.

Re Estate Cronan, N. S. Reports, vol. 27, pp. 436.

2. Construction of Act, ss. 5, 7—Power of Appointment—Vesting.—M. by his will directed his executors and trustees to invest a portion of his estate, and to pay the income to C., and in their discretion, to pay him a certain portion of the principal and after C.'s death to pay the principal to such uses and purposes as C. should appoint by will or deed, or in default to pay to M.'s next of kin. M. died before C. after the passing of the Succession Duties Act (1895, c. 8), having shortly before exercised his power of appointment by will:—

Held, construing ss. 5, 7 of this Act, that whether the estate vested in C. at the death of the testator M. or upon C.'s exercise of his power of appointment the property passed under the will of M. which created the power of appointment, and was not liable to pay succession duty.

Attorney-General vs. Parker, N. S. R. 31, 202.

PROVINCE OF BRITISH COLUMBIA. SUCCESSION DUTY ACT.

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CHAPTER 217.

AN ACT RESPECTING DUTY.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

1. Short Title.—This Act may be cited as the “Succession Duty Act.” 1907, c. 39, s. 1.

INTERPRETATION.

2.—In this Act—

“**Property.**”—“Property” shall include real and personal property of every description and every estate or interest therein capable of being devised or bequeathed by will, or of passing on the death of the owner to his heirs or personal representatives:

“**Child.**”—“Child” shall include any lawful child of the deceased, or any lineal descendant of such child, or any person or persons adopted before the age of twelve years by the deceased as his child or children, or any infant to whom the deceased for not less than ten years immediately prior to his death stood in the acknowledged relationship of a parent, or any lineal descendant of such adopted child or infant as aforesaid born in lawful wedlock:

“**Aggregate Value.**”—“Aggregate value” means the value of the property before the debts, incumbrances, or other allowances authorized by this Act are deducted therefrom, and shall include property situate without the Province as well as property situate within the Province:

“**Net Value.**”—“Net value” means the value of the property, both within and without the Province, after the debts, incumbrances, or other allowances or exemptions authorized by this Act are deducted therefrom:

“**All Property Situate Within the Province.**”—“All property situate within the Province” shall include all policies of insurance, wherever entered into or wherever payable, and all mortgages upon property of any kind situate or partly situate with-

in the Province, and all choses in action of whatsoever kind, wheresoever entered into or wheresoever payable, all shares, stocks, bonds, debentures, and other securities for money, no matter where the corporation or other body issuing the same may be located, belonging to the estate of any person dying in the Province, who was at the time of his death domiciled in the Province:

"Minister."—"Minister" means the Minister of Finance and Agriculture. 1907, c. 39, ss. 2, subsec. (1), 4, subsec. (1) (a) (part). (*Part new*).

PRELIMINARY.

3. Mode of Determining Dutiable Value.—In determining the net value of any property of a deceased person for the purposes of the payment of succession duty hereunder, the aggregate value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses, probate duty, and for his debts and incumbrances; and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property; but an allowance shall not be made.—

- (a) For debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, and take effect out of his interest; nor
- (b) For any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained; nor
- (c) More than once for the same debt or incumbrance charged upon different portions of the estate; nor
- (d) Shall any allowance or reduction be made for the expense of administration of the estate (except probate duty) or the execution of any trust created by the will of a testator. 1907, c. 39, s. 2, subsec. (2).

PROPERTY LIABLE TO SUCCESSION DUTY.

4. To What Act does not Apply.—This Act shall not apply, so far as liability to pay succession duty is concerned,—

(1) **In Value.**—To any estate the net value of which does not exceed five thousand dollars; nor

(2) **In Case of Certain Relations of the Deceased.**—To property passing under a will, intestacy, or otherwise, to or for the use of the father, mother, husband, wife, child, daughter-in-law, or son-in-law of the deceased, where the net value of the property of the deceased does not exceed twenty-five thousand dollars. 1907, c. 39, s. 3; 1908, c. 46, s. 2.

5. (1) Property Liable to Succession Duty.—Save as aforesaid, the following property shall be subject on the death of any person, to succession duty as hereinafter provided, to be paid for the use of the Province over and above the probate duty prescribed in that behalf from time to time by law:—

(a) **Property Situate in Province.**—All property of such deceased person situate within the Province, and any interest therein or income therefrom, whether the deceased person owning

or entitled thereto was domiciled in the Province at the time of his death, or was domiciled elsewhere, passing either by will or intestacy:

(b) Property Voluntarily Transferred in Contemplation of Death.—All property of such deceased person situate within the Province, or any interest therein or income therefrom, which shall be voluntarily transferred by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, bargainor, vendor, or donor, or made or intended to take effect in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof:

(c) Donations Mortis Causa or Voluntary Dispositions Made Within Twelve Months Before Death, etc.—Any property taken as a *donatio mortis causa*, made by any person dying on or after the first of May, 1899, or taken under a disposition made by any person so dying, purporting to operate as an immediate grant or gift *inter vivos*, whether by way of grant, transfer, delivery, declaration of trust, or otherwise, which shall not have been *bona fide* made twelve months before the death of the deceased, including property taken under any grant or gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the grant or gift, and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise:

(d) Property Transferred by Owner to Himself Jointly With Some Other Person.—Any property which a person dying on or after the first day of May, 1899, having been absolutely entitled thereto, has caused or may cause to be conveyed or transferred to or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person, including also any purchase or investment effected by the person who was absolutely entitled to the property, either by himself alone, or in concert or by arrangement with any other person:

(e) Property Passing Under Settlement.—Any property passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, made by any person dying on or after the first day of May, 1899, by deed or other instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof, for life, or any other period, determinable by reference to death, is reserved, either expressly or by implication to the settlor, or whereby the other may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property or the proceeds of sale thereof, or to otherwise resettle same or any part thereof:

(f) Annuities, etc.—Any annuity or other interest purchased or provided by any person dying on or after the first day of May, 1899, either by himself alone, or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased:

(g) **Property of Which Deceased was Competent to Dispose Liable to Duty.** Imp. Act, 57-58 Vict., c. 30, s. 2 (a) and s. 22 (2).—Any property of which a person dying after the thirty-first day of August, 1900, was at the time of his death competent to dispose; and a person shall be deemed to have been and to be competent to dispose of property if he had or has such an estate or interest therein, or such general or limited power as would, if he were *sui juris*, enable him to dispose of the property as he should think fit, or to dispose of the same for the benefit of his children, or some of them, whether the power is exercisable by instrument *inter vivos*, or by will, or both, including the power exercisable by a tenant in tail, whether in possession or not, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him, whether the concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose.

(2) **Particular Description of Property Liable not to Affect General Words.**—The descriptions of properties in clauses (c), (d), (e), (f), and (g) of the last preceding subsection shall not be construed to restrict the generality of the descriptions contained in clauses (a) and (b) of the said subsection. 1907, c. 39, s. 4, subsections (1) (a) (*part*), (b), (c), (d), (e), (f), (g), (2).

Re Boyd Estate to B. C. Succession Duty Act (1916) 34 W. L. R. p. 811.

Deceased who was a resident and domiciled in Ontario, was a partner in an Ontario business that owned certain lands in British Columbia.

Held.—that under R. S. B. C. c. 217, s. 5 (a), succession duty was payable in respect of the said lands.

6. Bequest to an Executor in Lieu of Commission.—Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commissions or allowance, and the said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess shall be liable to the said duty, and such compensation shall be fixed by a Judge of the Supreme Court. 1907, c. 39, s. 11.

AMOUNT OF DUTY.

7. Duty in Case of Father, etc.—When the net value of the property of the deceased exceeds twenty-five thousand dollars, and passes under a will, intestacy, or otherwise, either in whole or in part, to or for the use of the father, mother, husband, wife, child, daughter-in-law, or son-in-law of the deceased, all property situate within the Province, or so much thereof as so passes (as the case may be), shall be subject to duty as follows:—

- (a) Where the net value exceeds twenty-five thousand dollars, but does not exceed one hundred thousand dollars, at the rate of one dollar and fifty cents for every one hundred dollars:
- (b) Where the net value exceeds one hundred thousand

dollars, at the rate of two dollars and fifty cents for every one hundred dollars:

- (c) Where the net value exceeds two hundred thousand dollars, at the rate of five dollars for every one hundred dollars. 1907, c. 39, s. 4, subsection (3); 1908, c. 46, s. 3.

8. Duty in Case of Grandfather, etc.—Where the net value of the property of the deceased exceeds five thousand dollars and passes under a will, intestacy, or otherwise, either in whole or in part, to or for the use of the grandfather, grandmother, or any other lineal ancestor of the deceased, except the father or mother, or to any brother or sister of the deceased, or to any descendants of such brother or sister, or to a brother or sister of the father or mother of the deceased, or to any descendant of such last mentioned brother or sister, all property situate within the Province, or so much thereof as so passes (as the case may be), shall be subject to a duty of five dollars for every one hundred dollars of the net value without any exemption. 1907, c. 39, s. 4, subsection (4); 1908, c. 46, s. 4.

9. Duty in Case of Collaterals and Strangers.—Where the net value of the property of the deceased exceeds five thousand dollars and passes under a will, intestacy, or otherwise, either in whole or in part, to or for the use of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the use of any stranger in blood to the deceased, save as hereinbefore provided for, all property situate within the Province, or so much thereof as so passes (as the case may be), shall be subject to a duty of ten dollars for every one hundred dollars of the net value without any exemption. 1907, c. 39, s. 4, subsection (5); 1908, c. 46, s. 4.

10. Proviso.—The duties hereby imposed shall be deducted from the share of each person entitled to share in the estate, according to the rate applicable as aforesaid to such person's share. 1907, c. 39, s. 4, subsection (6).

11. Proviso as to Property Brought into Province for Administration.—Any portion of the estate of any deceased person, whether at the time of his death such person was domiciled in the Province or elsewhere, which is brought into the Province by the executors or administrators of the estate to be administered or distributed in the Province, shall be liable to the duty hereinbefore imposed; but if any estate, succession, or legacy duty or tax has been paid upon such property elsewhere than in the Province, and such duty or tax is equal to or greater than the duty payable on property in the Province, no duty shall be payable thereon, and if the duty or tax so paid elsewhere is less than the duty payable on property in this Province, then the property upon which such duty or tax has been paid elsewhere shall be subject to the payment of such portion only of the succession duty provided for in the last four preceding sections as will equal the difference between the duties payable under this Act with respect to property in the Province and the duty or tax so paid elsewhere. 1907, c. 39, s. 4, subsection (7) (a).

12. Allowance Where Duty Paid Without the Province.—Where in respect of any movable or personal property locally situate without the Province, or any interest therein as aforesaid, any estate, succession, or legacy duty or tax elsewhere than in the

Province shall have been paid, a like allowance for the amount so paid as in the last preceding section mentioned shall be made by the Province, and the property upon which such duty or tax has been paid elsewhere shall be subject to the payment of such portion only of the succession duty provided for in the last preceding section as will equal the difference between the duties payable under this Act with respect to property in the Province and the duty or tax so paid elsewhere. 1907, c. 39, s. 4, subsection (7) (b).

13. Such Allowance to be Made Only Where Reciprocity in Respect Thereof Exists.—Provided further that allowance for any estate, succession, or legacy duty or tax payable elsewhere than in this Province shall be made under this Act only as to any country, State, or British province or possession where an allowance is made for the succession duty paid under this Act on property situate in this Province passing on the death of any person domiciled in any such country, State, or British province or possession, and the Lieutenant-Governor-in-Council, by Order, shall have extended the provisions of this Act as to such allowance by this Province so as to apply to such country, State, or British province or possession. 1907, c. 39, s. 4, subsection (7) (c).

14. Lieut.-Governor-in-Council may Revoke Reciprocity.—Order.—The Lieutenant-Governor-in-Council may, by Order, revoke any such order, where it appears that the law of such country, State, British province or possession has been so altered that it would not authorize the making of an order hereunder. 1907, c. 39, s. 4, subsection (7) (d).

15. Penalty Against Executor or Administrator who to Escape Payment of Duty Distributes Estate Without Bringing same into Province.—In case an executor or administrator shall, in order to escape payment of succession duty imposed by this Act, distribute any part of any such estate without bringing the same into the Province, such executor or administrator shall be liable, personally, to pay to His Majesty the amount of the duty which would have been payable had the assets so distributed been brought within the Province. 1907, c. 39, s. 4, subsection (8).

16. Bona-Fide Transfers of Property not Subject to Act.—Nothing herein contained shall render liable for duty any property *bona fide* transferred for a consideration that is of a value substantially equivalent to the property transferred. 1907, c. 39, s. 4, subsection (9).

17. (1) Future and Contingent Estates.—Where property subject to succession duty under this Act includes any future or contingent estate, income, or interest, the duty on such estate, income, or interest may be paid within the time limited by section 20 of this Act; and, where so paid, the duty shall be on the value of such estate, income, or interest computed under section 32 of this Act as at the death of the deceased. By consent of the Minister, in writing, duty may be paid after the time so limited and before such estate, income, or interest comes into possession; but in the event of such consent, the duty shall then be on a value not less, in any event, than the value of such estate, income, or interest computed under the said section 32 as at the date when the duty is paid; and no deduction shall be made for duty paid or payable on any prior estate, income, or interest. The duty on any future or contingent estate, income, or interest, if not sooner paid

(as in this subsection provided), shall be payable forthwith when such estate, income, or interest comes into possession, in which case the duty shall be on the value computed under the said section 32 as at the date of such coming into possession; and no deduction shall be made for duty paid or payable on any prior estate, income, or interest.

(2) Where the duty on any future or contingent estate, income, or interest has been paid by the executor, administrator, or trustee before such estate, income, or interest comes into possession, the duty so paid shall be charged on such future or contingent estate, income, or interest, and shall be repaid with interest at the rate mentioned in the said section 32 to the executor, administrator, or trustee, as the case may be, by the person who is to become entitled to such future or contingent estate, income, or interest; and if not sooner repaid shall then be repaid at the time when such estate, income or interest comes into possession. 1907, c. 39, s. 12.

18. Where no Person Entitled to Present Income of Future or Contingent Estates.—Where in respect of any future or contingent estate or interest there is no person beneficially entitled to the present income or enjoyment, or where there is some part thereof to which there is no person so entitled, the duty on such future or contingent estate or interest or on such part thereof, as the case may be, shall be payable as provided in sections 17, 19, and 20 of this Act. 1907, c. 39, s. 13.

19. (1) Commutation of Payment of Duty on Future or Contingent Estates.—Notwithstanding the duty may not be payable on any future or contingent estate, income, or interest until the time when the right of possession or actual enjoyment accrues, any executor, administrator, guardian, or trustee, or person owning a prior interest, when such executor, administrator, guardian, or trustee, or person has the custody or control of the property, may agree upon or commute for a present payment out of the property in discharge of the said duty; and the Minister may, upon the application of any such person, commute the succession duty, which would or might but for the commutation become payable in respect of such interest, for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty and interest; and on the receipt of such sum the Minister shall give a certificate of discharge from such duty, in the Form No. 4 in Schedule A hereto.

(2) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

(3) Provided, however, that a certificate purporting to be a discharge of the whole succession duty payable in respect of any property included in the certificate shall exonerate from the duty a *bona fide* purchaser for valuable consideration without notice, notwithstanding any such fraud or failure. 1907, c. 39, s. 14.

20. Interest on Duty not Paid Within two Years.—The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased, and if the same are paid within two years no interest shall be charged or collected thereon, but if not so paid, interest at the rate

of six per centum per annum shall be charged and collected from the expiry of such period of two years, and such duties, together with the interest thereon, shall be and remain a lien upon the property in respect to which they are payable until the same are paid. 1907, c. 39, s. 15 (*part*).

PROCEDURE TO ENFORCE PAYMENT OF DUTY.

21. (1) Aggregate Value of Estate—Property out of Province to be Included.—On all applications for letters probate or letters of administration, or for resealing probate or letters under the provisions of the "Probates Recognition Act," made to any Court in this Province, the applicant, or one of the applicants, shall make and file with the Registrar of the Court, at the time of filing the papers required by the practice of the Court on such application, two duplicate original affidavits of value and relationship, with inventories annexed, in the Form No. 1 in Schedule A hereto.

(2) Such affidavits shall be made and filed in all cases without regard to the nature or value of the property of the deceased. 1907, c. 39, s. 5, subsections (1), (2).

22. Procedure upon Receipt of Affidavits as to Value of Estate.—The said Registrar shall forthwith, on receipt of such duplicate original affidavits, forward one of them to the Minister at Victoria, together with a notice in the Form No. 2 in Schedule A hereto. The Minister, on receipt of the aforesaid affidavits, shall authorize the Auditor-General to determine the amount of succession duty (if any), and shall forward a statement of the same to the Registrar, together with his consent, in the Form No. 5 in Schedule A hereto, to issue letters probate or letters of administration. 1908, c. 46, s. 5; 1909, c. 42, s. 2.

23. Payment.—Security.—The said Registrar shall, upon the receipt of the Auditor-General's statement of the amount of succession duty due, and of the amount that may become due upon the happening of a contingency, require immediate payment of the amount due, or security thereof to be given by bond in the Form No. 3 in Schedule A hereto, and with regard to the amount that may become due upon the happening of a contingency, he shall require security to be given by bond in such form as he may approve. 1909, c. 42, s. 3.

24. Amount of Security.—In cases where a bond is required to be given under the last preceding section, such bond shall be in a penal sum equal to ten per centum of the sworn value of the property of the deceased person liable, or which may become liable, to succession duty, and shall be executed by the applicant, or all the applicants in case there is more than one, each of whom shall be bound in the whole amount of such bond, and two or more sureties to be approved by the Registrar of the Court to which application is made, who shall justify each in an amount equal to the sum for which he is to be liable, and the aggregate shall equal the amount of the penalty of the bond, and such bond shall be conditioned for the due payment to His Majesty of any duty to which the property coming to the hands of the said applicant or applicants may be found liable. In lieu of the said bond, the bond or policy of guarantee of any incorporated company empowered to grant guarantees, bonds, covenants, or policies for due and faithful accounting may be accepted as such security, and the above

provisions shall, *mutatis mutandis*, apply to such security. The interim receipt of such company may be accepted in lieu of the formal security, but the formal security shall be completed within two months from the date of such interim receipt. 1907, c. 39, s. 5, subsection (5).

25. Approval of Bond.—The said bond is to be approved by the Minister and filed in the office of the said Registrar to which application is made. 1907, c. 39, s. 5, subsection (6).

26. Notice of Passing of Accounts to be Served on Registrar.—In cases where security has been given for the payment of succession duty as aforesaid, notice of any appointment for the passing of the accounts of the executor or administrator shall be served upon the said Registrar by the executor or administrator or his solicitor, together with a copy of the accounts. 1907, c. 39, s. 5, subsection (7).

27. Forms to be as in Schedule A.—The forms in the Schedule A are to be followed as nearly as the circumstances of each case allow. 1907, c. 39, s. 5, subsection (8).

28. Foreign Executors not to Transfer Stocks Until Duty Paid.—No foreign executor or administrator shall assign or transfer any stocks, debentures, or shares in this Province standing in the name of a deceased person, or in trust for him, which are liable to pay succession duty, until such duty is paid to the said Registrar and any corporation allowing a transfer of any stocks, debentures, or security given as required by the last five preceding sections, or shares contrary to this section shall be liable to pay the duty payable in respect thereof. 1907, c. 39, s. 6; 1909, c. 42, s. 4.

29. Inquiry by Commissioner Regarding Property of Deceased and its Value.—In case the Minister is not satisfied that the affidavits and inventories filed, pursuant to section 21 hereof, disclose all the property of the deceased subject to duty under the provisions of this Act, or is not satisfied with the value sworn to, the Lieutenant-Governor-in-Council may appoint a Commissioner, under the "Public Inquiries Act," to inquire into and report what property of the deceased its subject to duty under this Act, and what is the value thereof or of any thereof. 1909, c. 42, s. 6 (*part*).

30. Notice of Inquiry.—Instead of the notice prescribed by section 7 of the "Public Inquiries Act," the Commissioner shall give one week's written notice of such inquiry to the persons applying for probate of the will, or letters of administration, of the estate of the deceased, of the time and place at which he shall make such inquiry and of the nature of such inquiry. Such notice shall be duly given if served upon the solicitors for said applicants. The Commissioner shall also give such written notice of such inquiry to such other persons as the Registrar of the Court, to which application for probate or letters of administration has been made, may by order direct. 1909, c. 42, s. 6 (*part*).

31. Appraisement.—Report.—The Commissioner shall appraise the property of the deceased at its fair market value, and he shall make his report in writing, in duplicate, one copy to be sent to the Lieutenant-Governor-in-Council, pursuant to the provisions of the "Public Inquiries Act," the other copy to be filed in the office of the said Registrar. 1909, c. 42, s. 6 (*part*).

32. Registrar, on Receipt of Report of Commissioner to Fix Cash Value of Estate, etc., and Give Notice.—The said Registrar shall, upon receiving the report of the Commissioner, forthwith forward the same to the Minister, and shall upon receiving the consent of the Minister, and the statement of the Auditor-General of the amount of succession duty payable, immediately give notice thereof, by registered letter, to such parties as by the rules of the Supreme Court would be entitled to notice in respect of like interests in analogous proceedings; and the value of every future or contingent or limited estate, income, or interest shall, for the purpose of this Act, be determined by Schedule C hereto, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be six per centum per annum; and the Auditor-General shall, on the application of any such Registrar, determine the value of any future, or contingent, or limited estate, income, or interest upon the facts contained in such report, and shall certify the same to the said Registrar, and such certificate shall be conclusive as to the matters dealt with therein. 1907, c. 39, s. 9; 1908, c. 46, s. 8; 1909, c. 42, s. 7.

33. Appeal.—Any person dissatisfied with the report, or any portion of the report, of the Commissioner may appeal therefrom to the Court of Appeal within thirty days after the making and filing of such report in the office of the said Registrar. The notice of such appeal to the Court of Appeal, and the procedure generally in connection with the said appeal, except as altered hereby, and the powers of the Court of Appeal in respect of such appeal, shall be the same as in the case of an ordinary appeal to the Court of Appeal from any judgment of a Judge of the Supreme Court. 1909, c. 42, s. 8.

34. Minister May Apply to Judge for Order Enforcing Payment of Succession Duty.—A Judge of the Supreme Court may at any time after the death of the deceased, upon the application of the Minister, issue a summons directing the executor, administrator, heir, or a devisee of the property liable to duty to appear before a Judge of the said Court on a day certain to be therein named, and show cause why the said duty should not be paid forthwith, or on a day to be fixed by the said Judge. Upon the return of the said summons, a Judge shall have power to order payment of the said duty forthwith, or to fix a day upon which the said duty shall be paid. The procedure applicable to such an application, including the enforcement of any order made, shall be the procedure of the Court governing applications to and orders made by Judges in Chambers. 1907, c. 39, s. 15, subsection (2).

35. Judge May Make Order as to Time for Payment of Duty and Interest.—A Judge of the Supreme Court may make an order, upon the application of any person liable for the payment of the said duty, extending the time fixed by law for payment thereof, and also the date when interest shall be chargeable, where it appears to such Judge that payment within the time prescribed by this Act is impossible, owing to some cause over which the person liable has no control. 1907, c. 39, s. 16.

36. Administrators, etc., to Deduct or Collect Duty.—Any person, administrator, executor, or trustee having in charge or trust any estate, legacy, or property subject to the said duty shall deduct the duty therefrom or collect the duty thereon upon the appraised value thereof from the person entitled to such pro-

perty, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon. 1907, c. 39, s. 17.

37. Executors' Power of Sale to Realize Duty.—Executors, administrators, and trustees shall have power to sell so much of the property of the deceased as will enable them to pay the said duty, in the same manner as they may be enabled by law so to do for the payment of debts of the testator or intestate. 1907, c. 39, s. 18.

38. (1) Money Coming into Executors' Hands for Duty to be Paid into Treasury.—Every sum of money retained by an executor, administrator, or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Registrar of the Court in which the affidavit has been filed, and shall be by him accounted for to the Provincial Treasury, or as the Minister may otherwise direct.

(2) Return Showing Amounts Unpaid.—The Registrars of the Courts in each judicial district shall, on the thirtieth day of June in each year, furnish to the Minister a return of the amount unpaid, giving the name of each estate, the date and the amount of the bond, names of sureties, and the amount of succession duty due by each estate, in the form in Schedule B hereto. 1907, c. 39, s. 19.

39. Duty Paid on Property Refunded by Next of Kin, etc., to Pay Debts Proved After Distribution, to be Repaid.—Where any debts shall be proven against the estate of a deceased person after the payment of legacies or distribution of property from which the said duty has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator, or trustee, if the said duty has not been paid to the Minister, or by the Minister if it has so been paid. 1907, c. 39, s. 20.

40. Judge May Order Persons to Show Cause Why Duty has not been Paid.—Practice.—If it appears to a Judge that any duty accruing under this Act has not been paid according to law, he shall, on application of any person interested, make an order directing the persons interested in the property liable to the duty to appear before the Court on a day certain, to be therein named, and show cause why the said duty should not be paid. The service order, and the time, manner, and proof thereof, and fees therefor, and the hearing and determining thereon, and the enforcement of the judgment of the Court thereon, shall be according to the practice in or upon the enforcement of a judgment of the Supreme Court. 1907, c. 39, s. 21.

41. Costs of Such Proceeding.—The costs of all such proceedings shall be in the discretion of the Court or Judge, and shall be upon the Supreme Court scale, unless and until another tariff shall be provided. 1907, c. 39, s. 22.

ADDITIONAL REMEDIES.

42. Recovery of Succession Duties by Action.—Any sum payable under this Act shall be recoverable with full costs of suit as a debt due to His Majesty from any person liable therefor by action in the Supreme Court, and it shall not in any case be neces-

sary to take the proceedings authorised by sections 28 to 32, both inclusive, of this Act. 1907, c. 39, s. 23.

43. Supreme Court May Determine What Property Liable to Duty.—A Judge of the Supreme Court shall also have jurisdiction, upon motion or petition, to determine what property is liable to duty under this Act, the amount thereof, and the time or times when the same is payable, and may himself or through any reference exercise any of the powers which by sections 29 to 31, both inclusive, of this Act are conferred upon any officer or person. 1907, c. 39, s. 24.

44. Action may be Brought Before Time for Payment of Duty.—Subject to the discretion of the Court as to costs, an action may be brought for any of the purposes in this Act mentioned, notwithstanding the time for the payment of the duty has not arrived. 1907, c. 39, s. 25.

45. Procedure.—In every such action His Majesty's Attorney-General shall have the same right, either before or after the trial, to require the production of documents, to examine parties or witnesses, or to take such other proceedings in aid of the action as a plaintiff has or may take in an ordinary action. 1907, c. 39, s. 26.

46. Issues, Trial of.—Where for the better determining any question raised in any such action the Court deems it advisable to order the trial of an issue or issues, it may give such directions in that behalf as it deems expedient. 1907, c. 39, s. 27.

47. References.—In case the Court shall think fit at any time to direct a reference, such reference may be to an officer of the Court as provided by the Supreme Court rules, or to any other person. 1907, c. 39, s. 28.

48. Appeal.—An appeal shall lie in an action or proceeding brought under this Act wherever an appeal would lie if the action were between subject and subject, and to the like tribunal. 1907, c. 39, s. 29.

49. Declaration by Court that Property Transferred Before Death Subject to Duty.—Where any property which has, previous to the death of a person whose estate is subject to duty, been conveyed or transferred to some other person is declared liable to duty, the Court may declare the duty to be a lien upon the property and may make such declaration, although the amount of such duty has not been ascertained; and where any property which, had it remained in the hands of the person to whom or for whose benefit it was conveyed or transferred by such deceased person, would have been liable to duty has been conveyed or transferred to any purchaser for valuable consideration, the Court may direct the person to whom or for whose benefit the said property was conveyed or transferred by such deceased person as aforesaid to pay the amount of the duty to which such property would have been subject as aforesaid. 1907, c. 39, s. 30.

50. Registration of Caution that Property Subject to Crown Lien.—In case it is claimed that any land or money secured by any mortgage or charge upon land is subject to duty, the Minister, or the solicitor acting in his behalf, may, when deemed necessary, cause to be registered in the proper Registry Office a caution stating that succession duty is claimed by the Minister in respect

of the said land, mortgage, or charge on account of the death of the deceased, naming him, and any subsequent dealing with such land, mortgage, or charge shall be subject to the lien for such duty; but nothing herein contained shall affect the rights of the Crown to claim a lien independently of the said caution. 1907, c. 39, s. 31.

51. Application of Preceding Sections.—The preceding sections 42 to 50, both inclusive, shall apply to the estates of all persons in respect of which duty is claimed, whether such persons have died before or shall die after the passing of this Act. 1907, c. 39, s. 32.

52. Remedies to be in Addition to those Otherwise Provided.—The remedies provided in the preceding sections 42 to 51 both inclusive, shall be in addition to those provided by the other provisions of this Act. 1907, c. 39, s. 33.

RULES AND REGULATIONS.

53. Lieut.-Governor May Make Rules.—The Lieutenant-Governor-in-Council may make regulations for carrying into effect the provisions of this Act, which shall be published forthwith in the Gazette, and such regulations shall be laid before the Legislative Assembly forthwith, if the Legislature is in session as the date of such regulations, and if the Legislature is not in session, such regulations shall be laid before the House within the first fourteen days of the session next after such regulations are made. 1907, c. 39, s. 34.

SCHEDULES

SCHEDULE A.

FORM No. 1.

AFFIDAVIT OF VALUE AND RELATIONSHIP.

This affidavit is to be made by the applicant, or one of the applicants, applying for letters.

"Succession Duty Act" (British Columbia).

(Section 21).

CANADA.
PROVINCE OF BRITISH COLUMBIA. }
COUNTY OF

IN THE
In the Matter of the Estate of _____, late of the _____ of _____, in
the _____ of _____, deceased.

I, _____, make oath and say:—

That _____ the applicant for letters _____ to the estate of _____,
who died on or about the _____ day of _____, 19____, domiciled in _____.

That _____ have caused application to be made in the office of the
Registrar of the above-named Court that letters _____ be granted to
the estate of the said _____ by the said Court.

That _____ have made full, careful, and searching inquiry for the
purpose of ascertaining what real and personal property and effects
the said _____ was possessed of, or entitled to, at the time of his
death, together with the market value thereof respectively.

That have, according to the best of knowledge, information, and belief, set forth in the Inventory herewith exhibited, marked "X," a full, true, and particular account of all the real and personal estate of the said , or of which the said was possessed, or to which he was entitled at the time of h death, together with the market value as at the *date of death* of each and every asset forming part of the said real and personal estate and particularized in the said Inventory. The said Inventory includes all real and personal estate over which the deceased had and exercised absolute power of appointment. The gross value of the said estate as at date of deceased's death was \$

That have included in said Inventory every security, debt, and sum of money outstanding due or payable to or standing to the credit of the said deceased at the time of h death, and in estimating the value thereof have included all the interest due, payable, chargeable, and accruing due thereon up to the death of the said deceased.

That, save and except what is set forth in the said Inventory, the said was not, to the best of knowledge, information and belief, at the time of h death possessed of or entitled to any debt or sum of money, or any security, pledge, or undertaking for the payment of any money to h on any account whatsoever, or to any leasehold or other personal estate, goods, chattels, or effects in possession or reversion absolutely or contingently or otherwise howsoever.

That in the said Inventory is included all the property of the said situate outside of this Province, as well as the property situate within the Province.

That, save and except what is set forth in the said Inventory the said was not, to the best of knowledge, information, and belief, at the time of h death seised of or entitled to any real estate in possession, remainder, and reversion absolutely or contingently or otherwise howsoever.

That, to the best of knowledge, information, and belief, the said deceased did not voluntarily transfer by deed, grant, or gift made in contemplation of h death, or made or intended to take effect in possession or employment after h death, any property or any interest therein, or income therefrom to any person in trust or otherwise by reason whereof any person is or shall become beneficially entitled in possession or expectancy in or to the said property or income thereof.

That, to the best of knowledge, information, and belief, the said deceased did not at any time within twelve months previous to the date of h death transfer by way of *donatio mortis causa*, or purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, any property whatsoever.

That, to the best of knowledge, information, and belief, the said deceased did not at any time previous to the date of h death transfer any property of which property the *bona fide* possession was not assumed by the donee immediately upon the gift, and thenceforth retained to the entire exclusion of the donor or any benefit to h by contract or otherwise.

That, to the best of knowledge, information, and belief, the said deceased did not transfer or cause to be transferred to or vested

in h self and any person jointly any property to which was absolutely entitled by purchase or investment, or in any other manner whatsoever, so that the beneficial interest therein or in some part thereof passed or accrued by survivorship on h death to such other person.

That, to the best of knowledge, information, and belief, the said deceased was not at the time of h death a party to any past or future settlement, including any trust, whether expressed in writing or otherwise, whether made for valuable consideration or not, as between the settlor and any other person, and not taking effect as a will whereby an interest in such property or the proceeds of the sale thereof for life, or any other period determinable by reference to death, was reserved expressly or by implication to the deceased, or whereby the deceased reserved to h self the right by the exercise of any power to restore to h self, or to reclaim the absolute interest in such property or the proceeds of the sale thereof, or otherwise resettle the same or any part thereof.

That, to the best of knowledge, information, and belief, no annuity or other interest had been purchased or provided by the said deceased, either by h self alone or in concert or by arrangement with any other person.

That have in the Inventories respectively marked "X" and "Y," hereto annexed, set forth the assets, debts, and liabilities of the deceased and the names of the several persons to whom the property of the said deceased will pass, the degree of relationship (if any) in which they stand to the deceased, their addresses so far as can ascertain them, and the nature and value of the property passing to each of these persons respectively.

Sworn before mé at ,
 in the of ,
 this day of , 19 .

A Commissioner, etc. }

Inventory X.

IN THE .

"Succession Duty Act" (British Columbia).

In the Matter of , deceased, late of the of , in the
County of

REAL ESTATE. Give full value of property, setting out incumbrances (if any) in detail separately.	Principal.	Interest.	Total.
Moneys Secured by Mortgage.	Principal.	Interest.	Total.
Securities for Money, including Life Insurance and Cash.	Principal.	Interest.	Total.
Book Debts and Promissory Notes, etc.	Principal.	Interest.	Total.

INVENTORY "Y"

IN THE

"Succession Duty Act" (British Columbia).

In the Matter of the Estate of _____, deceased, late of the
 of _____, in the County of _____.

Name.	Relationship.	Address.	Property passing.	Value.

This is Inventory "Y" referred to in the Affidavit of Value and
 Relationship of _____.

Sworn to at _____ on the _____ day of _____, 19 _____.

.....
A Commissioner, etc.

1907, c. 39, Sch. A, Form 1.

FORM No. 2.

NOTICE OF APPLICATION FOR LETTERS.

"Succession Duty Act" (British Columbia).
(Section 22).

IN THE

In the Matter of the Estate of _____, deceased.

Notice is hereby given that application for probate or letters of
 administration, administration with the will annexed, has been re-
 ceived as herein set forth :—

Name of deceased.

Date of death.

Domicile at death.

Name or names of applicant or applicants.

Name of applicant's solicitor.

Value of assets in British Columbia.

Value of assets (if any) elsewhere than in British Columbia.

Dated at _____ this _____ day of _____, 19 _____.

.....
Registrar..

The Hon. the Minister of Finance
of the Province of British Columbia, Victoria, B. C.

1907, c. 39, Sch. A, Form 2.

FORM No. 3.

BOND BY APPLICANTS FOR LETTERS.

"*Succession Duty Act*" (*British Columbia*).
(*Section 23*).

IN THE

In the Matter of _____, deceased.

Know all men by these presents that we, _____, of the _____ of _____, in the County of _____, of the _____, in the County of _____, of the _____, in the County of _____, are severally bound unto His Majesty the King in the respective sums following: The said _____ in the sum of \$ _____, the said _____ in the sum of \$ _____, and the said _____ in the sum of \$ _____, to be paid to the Minister of Finance of the Province of British Columbia for the time being, for which payment well and truly to be made each of us respectively binds himself, his heirs, executors, and administrators, firmly by these presents.

Sealed with our seals.

Dated the _____ day of _____, 19 _____.

The condition of this obligation is such that if the above-named _____ the _____ of all the property of _____ late of the _____ of _____, in the County of _____, deceased, who died on or about the _____ day of _____, 19 _____, do well and truly pay or cause to be paid to the Minister of Finance of the Province of British Columbia for the time being, representing His Majesty the King in that behalf, any and all duty to which the property, estate, and effects of the said _____ coming into the hands of the said _____ may be found liable under the provisions of the "*Succession Duty Act*," within two years from the date of the death of the said _____, or such further time as may be given for payment thereof under the provisions of said Act, or such further time as he may be entitled to otherwise by law for payment thereof, then this obligation shall be void and of no effect, otherwise the same to remain in full force and virtue.

Signed, sealed, and delivered in
the presence of—

..... }

AFFIDAVIT OF JUSTIFICATION.

COUNTY OF _____ }
To Wit: _____ }

I, _____, one of the sureties in the annexed bond named, make oath and say as follows:—

(1) I am seised and possessed, to my own use, of property in the Province of British Columbia of the actual value of _____ dollars over and above all charges upon and incumbrances affecting the same.

(2) I am worth the sum of dollars over and above my just debts, and any sum for which I am liable as surety or otherwise, except upon the said bond.

(3) My post-office address is as follows :—

Sworn before me at
in the County of , this
day of , 19 }
.....
A Commissioner, etc.

AFFIDAVIT OF JUSTIFICATION.

COUNTY OF }
To Wit :

I, , one of the sureties in the annexed bond named, make oath and say as follows :—

(1) I am seised and possessed, to my own use, of property in the Province of British Columbia of the actual value of dollars over and above all charges upon and incumbrances affecting the same.

(2) I am worth the sum of dollars over and above my just debts, and any sum for which I am liable as surety or otherwise, except upon the said bond.

(3) My post-office address is as follows :—

Sworn before me at
in the County of , this
day of , 19 }
.....
A Commissioner, etc.

AFFIDAVIT OF EXECUTION.

COUNTY OF }
To Wit :

I, , in the County of , make oath and say as follows :—

(1) I am the person whose name is subscribed to the annexed bond as the attesting witness to the execution thereof, and the signature set and subscribed thereto, as such attesting witness, is of my proper handwriting, and my name and addition are correctly above set forth.

(2) I was present and did see the said bond duly signed and executed by , therein named.

(3) I am well acquainted with the said .

Sworn before me at
in the County of , this
day of , 19 }
.....
A Commissioner, etc.

FORM No. 4.

CERTIFICATE OF DISCHARGE.

"*Succession Duty Act*" (*British Columbia*).
(*Section 19*).

In the Matter of the Estate of _____, late of _____, in the County of _____, deceased.

This is to certify that the full amount of succession duty payable on the estate of the above-named deceased, as set out in the affidavits and papers filed in my office, has been paid, and the property therein set forth is therefore discharged from any further claim to succession duty.

This certificate is given under the terms and subject to the conditions of section 19 of the "*Succession Duty Act*."

Dated at Victoria this _____ day of _____, 19 ____.

Minister of Finance and Agriculture.

1907, c. 39, fch. A, Form 7.

FORM No. 5.

CONSENT TO ISSUE OF LETTERS WHERE ESTATE IS LIABLE TO
SUCCESSION DUTY.

"*Succession Duty Act*" (*British Columbia*).
(*Section 22*).

To the Registrar of the _____ Court of _____:

In the Matter of the Estate of _____, deceased.

SIR,—Having perused the affidavit of value and relationship filed in this matter, and being of the opinion, upon the facts therein deposed to, that the property of the deceased is liable to succession duty, I hereby consent to letters _____ being issued, and herewith enclose statement of amount of succession duty due.

Yours truly,

Minister of Finance and Agriculture.

1907, c. 39, Sch. A, Form 8; 1908, c. 46, s. 10.

FORM No. 6.

CONSENT TO ISSUE OF PROBATE OR LETTERS OF ADMINISTRATION
WHERE ESTATE NOT LIABLE TO SUCCESSION DUTY.

"*Succession Duty Act*" (*British Columbia*).

To the Registrar of the _____ Court of _____:

In the matter of the Estate of _____, deceased.

SIR,—Having perused the affidavit of value and relationship filed in this matter, and being of the opinion, upon the facts therein deposed to, that the property of the deceased is not liable to succession duty, I hereby consent to probate or letters of administration being issued.

Yours truly,

Minister of Finance and Agriculture.

1909, c. 42, s. 5.

SCHEDULE B.

"SUCCESSION DUTY ACT."

(Section 38).

Return of Amounts unpaid for Succession Duty, for which Bonds are held as Security by the Registrar of the Court at .

Name of Estate.	Date of Bond.	Names of Sureties.	Amount of Bond.	Amount due for Succession Duty.

Dated at this day of , 19 .

.....
Registrar.

The Hon. the Minister of Finance and Agriculture,

Victoria, B. C.

1907, c. 39, fch. B.

SCHEDULE C.

(Section 32).

Age.	Expectation Years.	Age.	Expectation Years.	Age.	Expectation Years.	Age.	Expectation Years.
0	57.64	25	38.44	50	20.51	75	6.56
1	56.64	26	37.65	51	19.84	76	6.17
2	55.64	27	36.93	52	19.17	77	5.85
3	55.09	28	36.18	53	18.50	78	5.48
4	54.83	29	35.47	54	17.81	79	5.22
5	53.83	30	34.75	55	17.14	80	4.93
6	53.08	31	34.04	56	16.53	81	4.61
7	52.67	32	33.30	57	15.90	82	4.36
8	55.17	33	32.59	58	15.26	83	4.04
9	50.80	34	31.86	59	14.64	84	3.84
10	49.89	35	31.15	60	13.99	85	3.58
11	49.38	36	30.41	61	13.42	86	3.44
12	48.38	37	29.69	62	12.83	87	3.26
13	47.50	38	29.07	63	12.26	88	3.05
14	46.60	39	28.27	64	11.72	89	2.94
15	45.90	40	27.57	65	11.17	90	2.68
16	45.14	41	26.85	66	10.65	91	2.46
17	44.23	42	26.14	67	10.12	92	2.25
18	43.39	43	25.42	68	9.61	93	2.34
19	42.64	44	24.69	69	9.13	94	2.90
20	41.98	45	23.98	70	8.68	95	1.90
21	41.23	46	24.27	71	8.16	96	1.06
22	40.51	47	22.57	72	7.65	97	1.00
23	39.84	48	21.89	73	7.24	98	0.50
24	39.15	49	21.20	74	6.83		

1907, c. 39, Sch. C.

CHAPTER 58.

An Act to amend the "Succession Duty Act "

R.S.B.C. 1911, c. 27.

[6th March, 1915.]

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Short Title.—This Act may be cited as the "Succession Duty Act Amendment Act, 1915."

2. Amends s. 3.—Section 3 of the "Succession Duty Act," being chapter 217 of the "Revised Statutes of British Columbia, 1911," is hereby amended by striking out the first eight lines thereof, and substituting therefor the following:—

"3. Allowances Made in Determining Dutiable Value.—In determining the dutiable value of property or the value of a beneficial interest in property, the fair market value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses, debts, and encumbrances; and any debt or encumbrance for which an allowance is made shall be deducted from the value of the land or other subject of property liable thereto; but an allowance shall not be made—"

3. S. 3a.—Said chapter 217 is hereby further amended by adding after section 3 the following section:—

"3A. Allowance in Respect of Duty Paid Elsewhere.—Where in respect of any succession in this Province any succession duty is payable in any part of the British Dominions other than British Columbia, or in a foreign country by the law of that country, in respect of which now allowance of duty is made under section 13, and the Minister is satisfied that by reason of such succession any duty is payable there in respect of it, he may allow the amount of that duty to be deducted from the value of the succession in this Province."

4. Amends s. 7.—Subsections (b) and (c) of section 7 of said chapter 217 are hereby repealed, and the following are substituted therefor:—

"(b) Where the net value exceeds one hundred thousand dollars but does not exceed two hundred thousand dollars, at the rate of one dollar and fifty cents for every one hundred dollars of the first one hundred thousand dollars, and two dollars and fifty cents for every one hundred dollars above the one hundred thousand dollars:

"(c) Where the net value exceeds two hundred thousand dollars, at the rate of one dollar and fifty cents for every one hundred dollars of the first one hundred thousand dollars, two dollars and fifty cents for every one hundred dollars of the second one hundred thousand dollars, and five dollars for every one hundred dollars above the two hundred thousand dollars."

5. Amends s. 21.—Section 21 of said chapter 217 is hereby amended by adding thereto the following subsection:—

"(3). Where an applicant resides outside the Province, such affidavits may be made by an agent with a knowledge of the facts

to be deposited to, and, if accepted by the Minister, may be filed by such agent with the Registrar of the Court."

6. Re-enacts s. 23.—Section 23 of said chapter 217 is hereby repealed, and the following is substituted therefor:—

"23. (1) **Payment.**—The said Registrar shall, upon receipt of the Auditor-General's statement of the amount of succession duty due and of the amount that may become due upon the happening of a contingency, require immediate payment of the amount due.

"(2) **Security.—Part Payment and Security for Balance.**—The Lieutenant-Governor-in-Council may, on application of the executor or administrator, or his solicitor, authorize the Registrar to accept a bond in the Form 3 in Schedule A hereto for the whole amount of succession duty due, or may authorize him to accept a portion of the duty due, together with a bond for the balance as hereinafter mentioned.

"(3) **Security for Amount Due Upon a Contingency.**—With regard to the amount that may become due upon a contingency, the Lieutenant-Governor-in-Council may require security to be given in such form as the Minister may approve."

7. Re-enacts s. 24.—Section 24 of said chapter 217 is hereby repealed, and the following is substituted therefor:—

"24. **Amount of Security.**—In cases where a bond is required to be given under the next preceding section, such bond, if for the full amount of succession duty due, shall be in a penal sum equal to ten per centum of the sworn value of the property of the deceased person, and if for a portion only of the succession duty, shall be in a penal sum equal to ten per centum of such sworn value less the proportionate value represented by the payment made, and shall be executed by the applicant, or all the applicants in case there is more than one, each of whom shall be bound in the whole amount of such bond, and two or more sureties to be approved by the Minister, who shall justify, each in an amount equal to the sum for which he is to be liable, and the aggregate shall equal the amount of the penalty of the bond, and such bond shall be conditioned for the due payment to His Majesty of any duty to which the property coming to the hands of the said applicant or applicants may be found liable. In lieu of the said bond, the bond or policy of guarantee of any incorporated company empowered to grant guarantees, bonds, covenants, or policies for due and faithful accounting may be accepted as such security, and the above provisions shall, *mutatis mutandis*, apply to such security. The interim receipt of such company may be accepted in lieu of the formal security, but the formal security shall be completed within two months from the date of such interim receipt."

8. Re-enacts s. 31.—Section 31 of said chapter 217 is hereby repealed, and the following is substituted therefor:—

"31. **Appraisalment and Report.**—The Commissioner shall appraise the property of the deceased at its fair market value, and he shall make his report in writing in duplicate, one copy to be sent to the Lieutenant-Governor-in-Council, pursuant to the provisions of the 'Public Inquiries Act,' the other copy to be sent to the executor or administrator, as the case may be, or to his solicitor."

9. Amends s. 32.—Section 32 of said chapter 217 is hereby

amended by striking out the first three lines, and substituting therefor the following:—

“32. The said Registrar shall, upon receiving the consent of the Minister and the statement.”

10. Refund of Duty.—Where any debts shall be proven against the estate of a deceased person, after the payment of legacies or distribution of property from which the duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin a proportion of the duty so paid shall be repaid to him by the trustee, executor, or administrator, if such duty has not been paid to the Registrar, or by the Minister if it has been so paid.

CHAPTER 61.

An Act to amend the “Succession Duty Act.”

[31st May, 1916.]

R.S.B.C. 1911, c. 217; 1915, c. 58.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Short Title.—This Act may be cited as the “Succession Duty Act Amendment Act, 1916.”

2. Amends s. 17.—Section 17 of the “Succession Duty Act,” being chapter 217 of the “Revised Statutes of British Columbia, 1911,” is hereby amended by striking out the words “within the time limited by section 20 of this Act” in the third and fourth lines thereof, and substituting therefor the words “within such time, not exceeding two years from the death of the deceased, as may be fixed by the Lieutenant-Governor-in-Council”

3. Re-enacts s. 21.—Section 21 of said chapter 217, as amended by section 5 of chapter 58 of the Statutes of 1915, is hereby repealed, and the following is substituted therefor:—

“21. (1) **Time for Filing Affidavits.**—On all applications for letters probate or letters of administration, or for resealing probate or letters under the provisions of the ‘Probate Recognition Act,’ made to any Court in this province, the applicant, or one of the applicants, shall, within six months after the death of the deceased, or such further time as may be allowed by the Minister, make and file with the Registrar of the Court, at the time of filing the papers required by the practice of the Court on such application, two duplicate original affidavits of value and relationship, with inventories annexed, in the Form No. 1 in Schedule A hereto.

“(2). Such affidavits shall be made and filed in all cases without regard to the nature or value of the property of the deceased.

“(3). Where an applicant resides outside the Province, such affidavits may be made by an agent with a knowledge of the facts to be deposed to, and, if accepted by the Minister, may be filed by such agent with the Registrar of the Court.”

4. Re-enacts s. 23.—Section 23 of said chapter 217, as re-

enacted by section 6 of chapter 58 of the Statutes of 1915, is hereby repealed, and the following is substituted therefor:—

"23. (1) Payment.—The said Registrar shall, upon receipt of the Auditor-General's statement of the amount of succession duty due and of the amount that may become due upon the happening of a contingency, require immediate payment of the amount due.

"(2) Security.—Part Payment and Security for Balance.—The Lieutenant-Governor-in-Council may, on application of the executor or administrator, or his solicitor, authorize the Registrar to accept a bond in such form as the Lieutenant-Governor-in-Council may approve for the whole amount of succession duty due, or for the amount that may become due upon the happening of a contingency, as the case may be, or may authorize him to accept a portion of the duty due, or to become due, together with a bond for the balance as hereinafter mentioned."

5. Remission of Duties in Case of Persons Killed in War.—Where any person has died or shall die from wounds inflicted, accident occurring, or disease contracted within twelve months before death while in the active military or naval service of His Majesty, whether in Canada or abroad, in the present War, the Minister may, if he thinks fit, remit the whole or any part of the duty chargeable in respect of property passing upon the death of the deceased to the father, mother, husband, wife, child, brother, or sister of the deceased.

6. Amends Schedule.—Form No. 1 Schedule A to said chapter 217 is hereby amended by substituting the word "enjoyment" for the word "employment" where it occurs in the seventh line of page 2686.

PRINCE EDWARD ISLAND.**An Act to provide for the Payment of Succession
Duties in Certain Cases.**

[Assented to May 9th, 1894.]

57 VICT., CAP. 5.

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LIST OF ACTS AND AMENDMENTS.

1894, 57 Vict., cap. 5. An Act to provide for the payment of Succession Duties in Certain Cases.

1908, Edw. VII, cap. 12. An Act to amend the Succession Duty Act of 1894.

Preamble.—Whereas, the Province of Prince Edward Island expends large sums annually for the care of the insane and the poor, and it is expedient to provide a fund for defraying part of such expenditure by a succession tax on certain estates of persons dying as hereinafter mentioned:

Therefore, be it enacted by the Lieutenant-Governor and Legislative Assembly as follows:

1. Short Title.—This Act may be cited as “The Succession Duty Act, 1894.”

2. “Property”—meaning of—The word “property” in this Act includes real and personal property of every kind and description, and every estate or interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives.

3. “Executor” and “Administrator”—Meaning of.—“Executor” shall mean and include “executrix,” and “Administrator” shall mean and include “administratrix.”

4. Where Act Shall not Apply.—This Act shall not apply:—

(1) To any estate the value of which, after payment of all debts and expenses of administration, does not exceed three thousand dollars; nor

(2) To property given, devised, or bequeathed for religious, charitable or educational purposes within this Province; nor

(3) To property passing under a will, intestacy or otherwise to or for the father, mother, husband, wife, child, grandchild, brother, sister, brother's child, or sister's child, daughter-in-law or son-in-law of the deceased, where the value of the property of the deceased, after payment of all debts and expenses of administration, does not exceed ten thousand dollars in value.

5. Property Passing on Death of Owner Liable to Succession Duty.—Save as aforesaid all property situate or being within this Province, whether the deceased person owning or entitled thereto last dwelt within said Province or not, passing either by will or intestacy, and any interest therein or income therefrom which shall be voluntarily transferred by deed, grant or gift, made in contemplation of the death of the grantor or bargainor, or made or intended to take effect, in possession or enjoyment after such death to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof, and all property wherever situate or being, over which the executor or administrator shall or may exercise control and which shall or may come into his possession, shall be subject to a succession duty to be paid for the use of the Province over and above all Probate and Surrogate fees.

(1) Where Rate of Duty Shall be 1½ Per Cent.—Where the value of the property of the deceased, after payment of all debts and expenses aforesaid, exceeds ten thousand dollars, and passes in manner aforesaid, either in whole or in part, to, or for the benefit of the father, mother, husband, wife, child, grandchild, brother, sister, brother's child, or sister's child, daughter-in-law or son-in-law of the deceased, the same or so much thereto as passes (as the case may be) shall be subject to a duty of one dollar and fifty cents for every one hundred dollars of the value; or,

(2) Where Rate Shall be 2½ Per Cent.—Where the value of the property, after payments as aforesaid, exceeds fifty thousand dollars, the whole property which passes as aforesaid shall be subject to a duty of two dollars and fifty cents for every one hundred dollars of the value; and

(3) Where Rate Shall be 2½ Per Cent.—Where the value of the property, after payments as aforesaid, exceeds three thousand dollars, so much thereof as passes to or for the benefit of the grandfather or grandmother, or any other lineal ancestor of the deceased, except the father and mother, or to a brother or sister of the father or mother of the deceased, or any descendant of such last mentioned brother or sister, shall be subject to a duty of two dollars and fifty cents for every one hundred dollars of value.

(4) Where Rate Shall be 7½ Per Cent.—Where the value of the property of the deceased, after payments as aforesaid, exceeds three thousand dollars, and any part thereof passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased, save as hereinbefore provided for, the same shall be subject to a duty of seven dollars and fifty cents for every one hundred dollars of the value.

6. Executors, etc., to File Inventory.—Bond for Payment of Duty.—An Executor or Administrator applying for Letters of Probate or Letters of Administration to the estate of a deceased person shall, before the issue of Letters of Probate or Administration to him, make and file with the Surrogate or Judge of Probate a full, true and correct statement under oath showing (a) A full, itemized Inventory of all the property of the deceased person and the market value thereof, (b) The several persons to whom the same will pass under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased, and the age, address and occupation of each of them so far as then can be ascertained. And the Executor, or Administrator, shall, before the issue of Letters of Probate or Letters of Administration, deliver to the Surrogate or Judge of Probate a bond in a penal sum equal to ten per cent. of the sworn value of the property of the deceased person liable to succession duty, executed by himself and two sureties (each of whom shall justify on oath) to be approved by the Surrogate or Judge of Probate, conditioned for the due payment to His Majesty of any duty to which the property coming into the hands of such Executor or Administrator of the deceased may be found liable. Such bond shall be in the form Schedule A to this Act.

7. Attorney General may Obtain Letters of Administration, etc., when no Application is Made for Same Within Thirty Days after Death of Owner of Estate.—Proviso.—If hereafter any person shall die whose estate or any part thereof is liable to succession duty under this Act, and Letters of Administration

or Probate be not applied for and actually granted, within thirty days of the death of such person, it shall be lawful for the Attorney General to apply for and obtain Administration or Probate as the case may be, without giving any security, either in his own name or that of any other person to be appointed by him, and when he does so the estate shall thereafter be administered under the direction of the Court of Chancery. Provided always that any person having such an interest in the estate as would entitle him to Letters of Administration or Probate may at any time upon application to the Court of Chancery, by petition, or summons, and giving security for the due payment of all succession duty payable in respect of such estate to the satisfaction of the said Court, assume the administration of the said estate.

8. When Appraisement to be Directed.—In case the Provincial Secretary and Treasurer of the Province of Prince Edward Island is not satisfied with the value of the property of the deceased, so sworn to, the Surrogate or Judge of Probate shall, at the instance of the Provincial Secretary and Treasurer, his solicitor or agent, direct in writing that an appraiser appointed by the Lieutenant Governor-in-Council of the Province shall make a valuation and appraise the said property under oath.

9. Valuation of Property.—In such case the appraiser shall forthwith give due and sufficient notice by delivery thereof or by registered letter to the executor or administrator, and to such other persons as the Surrogate or Judge of Probate may direct, of the time and place at which he will appraise such property, and he shall appraise the same accordingly at its fair market value, and make a report in writing thereof to the Surrogate or Judge of Probate, together with such other facts in relation thereto as the Surrogate or Judge of Probate may require, and such report shall be filed in the office of the Surrogate or Judge of Probate. The appraiser shall be entitled to receive for services performed under this Act, such remuneration as the Lieutenant-Governor-in-Council may decide, not exceeding Five dollars per day.

10. Where Provincial Secretary is not Satisfied with Value of Property, Appraiser may be Appointed by Lieutenant-Governor—Powers of Appraiser.—The Lieutenant-Governor-in-Council of the Province may, in any case in which the Provincial Secretary is not satisfied with the value of the property of the deceased, as aforesaid, appoint an appraiser, whose duty it shall be to examine such inventory and the property therein enumerated, and the appraisement thereof, and the correctness of the same. He shall have power to summon before him witnesses, and to require them to give evidence on oath orally or in writing (or on solemn declaration if they be parties entitled to affirm in civil matters), and to produce such documents and things as he may deem requisite to the full investigation of the matter of the correctness of said inventory and appraisement. For the purpose of such investigation he shall have all the powers that an executor or administrator has heretofore had when making an inventory. He shall alter, amend, add to or take away from the said inventory and appraisement as to him shall appear just and proper, and shall, if necessary, make a new inventory and appraisement. He shall as soon as possible conclude such investigation, and make his report thereon without delay.

11. Mode of Assessing Property Liable to Duty.—The Surrogate or Judge shall upon receiving the inventory and appraisement

from the executor or administrator unless the appraiser is directed to value and appraise, and in such case upon receiving the report of the appraiser, forthwith proceed to assess and fix the then cash value of all estates, interests, annuities and life estates or terms of years growing out of such estate, and the duty to which the same is liable, and shall immediately give notice thereof by service of a copy of such notice or by registered letter, to all parties known to be interested therein; and the value of every future or contingent or limited estate, income or interest shall, for the purpose of this Act, be determined by the rule, method and standard of mortality and of value to be fixed by an accountant named by the Provincial Secretary and Treasurer of the Province, and the accountant shall, on the application of a Surrogate or Judge of Probate, determine the value of such future or contingent or limited estate, income or interest upon the facts contained in the statement of the Surrogate or Judge of Probate hereinafter provided for, and shall certify the same to the Surrogate or Judge of Probate, and his certificate shall be conclusive as to the matters dealt with therein.

12. Appeals from Appraisement or Assessment.—Any person affected thereby who is dissatisfied with the appraisement or with the assessment of the Surrogate or Judge of Probate provided for in the last above section hereof may appeal therefrom to the Supreme Court of Prince Edward Island within thirty days after the registration of the notice to such person in giving security approved by a Judge of the Supreme Court to pay all costs, together with whatever duty shall be fixed by the said Court, and upon such appeal to the Supreme Court the Court shall have jurisdiction to determine all questions of valuation and of the liabilities of the appraised estate or any part thereof for such duty, and such decision shall be final.

13. Bond of Executor to be Delivered to Provincial Secretary.—The Surrogate or Judge of Probate shall require every executor or administrator as soon as the value of the property liable to succession duty has been ascertained, as hereinbefore provided, to deliver to him such bond as is provided for in section 6 of this Act, and shall forthwith upon receipt of such bond deliver the same to the Provincial Secretary and Treasurer of the Province at Charlottetown.

14. Surrogate to Prepare Statement of Facts Necessary to Determine Value of Estate.—The Surrogate or Judge of Probate shall in every case where he is required to assess and fix the cash value of future or contingent or limited estates, income or interest, prepare a statement of facts necessary to determine the value of such estate, income or interest, and deliver or mail a copy thereof, postage prepaid and registered, to the accountant named by the Provincial Secretary and Treasurer. He shall, upon request of such accountant, furnish him in the same way with such additional facts as may be necessary for such determination.

15. Surrogate to Make Monthly Returns to Provincial Secretary of Particulars of Estate Under Administration, etc.—The Surrogate or Judge of Probate shall make monthly returns to the Provincial Secretary and Treasurer showing the following facts:—

(1) The name and address of every executor or administrator to whom letters testamentary or letters of administration have been

granted, the date of granting the same, and the name of the deceased person to whose estate the same relate.

(2) The date of filing every inventory, together with the amount of the appraised value of the property therein.

(3) A copy of every statement filed under section 6 of this Act.

(4) Every valuation and appraisalment by the appraiser appointed by the Lieutenant-Governor-in-Council.

(5) A statement of every assessment by the Surrogate or Judge of Probate of the cash value of property liable to duty, showing the duty payable in respect of the same.

(6) A statement showing what appeals have been taken under section 12 of this Act, and what appeals have been decided, with the results of the same.

16. Bequests, etc., to Executors or Trustees.—Where a bequest or devise of property which otherwise would be liable to the payment of duty under this Act is made to an executor or trustee in lieu of commissions or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess only shall be liable to said duty, and the Judge having jurisdiction in the case shall fix such compensation.

17. When Duty Payable on Future Estates or Interests.—In all cases where there has been a devise, descent or bequest of property liable to succession duty, to take effect in possession, or to come into actual enjoyment after the expiration of one or more life estate or estates for a period of years, the duty on such future estate or interest shall not be payable nor interest begin to run thereon until the person or persons taking such future estate or interest shall come into actual possession of such estate or interest by the determination of estates for life or years, and the duty shall be assessed upon the value of the estate or interest at the time the right of possession accrues as aforesaid, and the person or persons so taking shall upon coming into actual possession become liable to pay such duty.

18. Duties Payable Within Eighteen Months from Death of Owner.—The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased or within eighteen months thereafter, and if the same are paid within eighteen months no interest will be charged or collected thereon, but if not so paid interest at the rate of six per centum per annum shall be charged and collected from the death of the deceased, and such duties, together with the interest thereon, shall be and remain a lien upon the property in respect to which they are payable until the same are paid.

19. Extension of Time for Payment of Duty.—The Judge of Probate having jurisdiction in the case may make an order, upon the application of any person liable for the payment of said duty, extending the time fixed by law for payment thereof where it appears to such Judge that payment within the time prescribed by this Act is impossible, owing to some cause over which the person liable has no control, provided, however, that such time shall in no case be extended for a greater period than one year beyond the time so fixed.

20. Administrators, etc., to Deduct Duty Before Delivering Property.—Any administrator, executor or trustee, having in charge or trust any estate, legacy or property subject to the said duty, shall deduct the duty therefrom, or collect the duty thereon, upon the appraised value thereof from the person entitled to such property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon.

21. Power to Sell for Payment of Duty.—Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay said duty in the same manner as they may be enabled by law so to do for the payment of debts of the testator or intestate.

22. To Whom Duty to be Paid.—Every sum of money retained by an executor, administrator or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Provincial Secretary and Treasurer of the Province, or as he may appoint.

23. Refunding Duty upon Subsequent Payment of Debts.—Where any debts are proven against the estate of a deceased person, after the payment of legacies or distribution of the property from which the said duty has been deducted, or upon which it has been paid, and a refund has been made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee, if the said duty has not been paid to the Provincial Secretary or Treasurer of the Province, or by the Provincial Secretary and Treasurer if it has been so paid.

24. Collection of Duty Upon Stocks, Bonds, etc.—Where any foreign executor, administrator or trustee assigns or transfers any stocks, bonds or debentures of any company or corporation in this Province, standing in the name of a deceased person, or in trust for a deceased person, which are liable to the said duty, the said duty, if not previously paid, shall be paid to the Provincial Secretary and Treasurer of the Province on the transfer thereof, otherwise the company or corporation permitting such transfer shall become liable to pay such duty, provided that such company or corporation had notice before such transfer that the said stocks, bonds or debentures were liable to the said duty.

25. Mode of Enforcing Payment of Duty.—If it appears to the Judge of Probate that any duty accruing under this Act has not been paid according to law, he shall make an order directing the person or persons interested in the property liable to the duty to appear before him on a day certain to be therein named, and show cause why said duty should not be paid. Such order shall be served either personally or by registered letter ten clear days before the day named in said order. Upon said day the Judge, upon being satisfied that such order has been duly served, may hear and determine all questions regarding said duty, and the person or persons liable therefor, and may make an order directing the person or persons liable to pay the same to make payment thereof to the Provincial Secretary and Treasurer forthwith, or within such reasonable time as may appear proper to the Judge. Such order shall be considered as a judgment of a Court of Records, and may be enforced by execution in the form Schedule B. hereto annexed.

26. Additional Remedies for Collection of Duty.—In addition to or in lieu of the remedy hereinbefore provided, if it shall

at any time appear to the Attorney General that the duty payable in respect of any estate or any part thereof under the provisions of this Act has not actually been paid within the time allowed by the Statute, he may:

(1) Proceed in the Court of Chancery to enforce the lien hereinbefore created; or,

(2) He may in the Court of Chancery or the Supreme Court proceed by suit to be begun by ordinary Writ of Summons or Capias to enforce the bond which may have been given as provided by this Act; or,

(3) He may in the same suit, notwithstanding that different parties may be required, proceed to enforce the lien and the bond.

27. Costs.—The costs of all proceedings under this Act shall be in the discretion of the Court or Judge.

28. Fees of Surrogate.—The Surrogate or Judge of the Court of Probate shall be entitled to take for the performance of the duties and services under this Act similar fees to those payable under the Statute in force relating to Probate Courts.

29. Lieutenant-Governor-in-Council may make Regulations.—The Lieutenant-Governor-in-Council may make regulations for carrying into effect the provisions of this Act, and such regulations shall be laid before the Legislative Assembly forthwith, if the Legislature is in session at the date of such regulations and if the Legislature is not in session such regulations shall be laid before the Legislature within the first seven days of the session next after such regulations are made.

30. Duty Paid on Property Situate Outside of the Province.—Where any property locally situate out of Prince Edward Island, or any interest therein shall have paid any estate, succession or legacy duty or tax elsewhere than in this Province, an allowance for the amount so paid shall be made by this Province, and the property upon which such duty or tax has been paid elsewhere, shall be subject to the payment of such portion only of the succession duty provided for in the preceding sections of this Act, as will equal the difference between the duty payable under this Act with respect to property in Prince Edward Island, and the duty or tax so paid elsewhere, provided that allowance for any estate, succession or legacy duty or tax payable elsewhere than in Prince Edward Island, shall be made under this section only as to any country, state or British province or possession where an allowance is made for the succession duty paid under this Act on property situate in Prince Edward Island, passing on the death of any person domiciled elsewhere than in Prince Edward Island, and the Lieutenant-Governor-in-Council by Order in Council shall have extended the provisions of this section, as to such allowance by this Province, so as to apply to such country, state or British province or possession; provided also that the Lieutenant-Governor-in-Council may revoke any such Order where it appears that the law of any such country, state, British province or possession has been so altered that it would not authorize the making of an Order under this section. Added by 8 Edw. VII., cap. 12.

SCHEDULE A.

Know all men by these presents that we, A. B. (*the administrator or executor*), C. D. and E. F., all of———, in the County of———, Province of Prince Edward Island, are held and firmly bound unto our Sovereign Lord the King in the sum of——— dollars (*ten per centum of the value as ascertained under this Act, the property liable to succession duty*), to be paid to His Majesty the King, for which payment well and truly to be made we bind ourselves, our and every of our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this———day of——— A.D., 19———.

The condition of this obligation is such that if the above bounden A. B. Administrator (*or executor as the case may be*), of———, deceased, shall make due payment to the Provincial Secretary and Treasurer of the Province of Prince Edward Island of all and any duty to which the property of the said———, deceased, coming to the hands of the said A. B. may be found liable, then this obligation to be null and void, otherwise to remain in full force and effect.

Signed, sealed and delivered
in presence of

[L. S.]

[L. S.]

[L. S.]

SCHEDULE B.

EXECUTION.

DOMINION OF CANADA,

Province of Prince Edward Island.

In the Surrogate and Probate Court.

County of———

ss

To the Sheriff of the County of———County

GREETING:

You are hereby required (or in case it may be an alias execution, as before) to levy of the goods and chattels of———, within your bailiwick, the sum of——— for costs, awarded in favour of (or as the case may be) in a certain proceeding lately had before me as Surrogate Judge of Probate, in and for Prince Edward Island; and have that money before me at my office, in Charlottetown, in said Island, within thirty days from the date hereof, to be rendered to the said———, and for want of such goods and chattels whereon to levy you will take the body of the said———, and him safely keep until the said sum and your costs of levying this execution be paid and make return thereof within thirty days from the date thereof.

Given under my hand this———day of———19———

C. D.

Surrogate, Judge of Probate.

E. F.

Registrar.

PROVINCE OF MANITOBA. SUCCESSION DUTY ACT.

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CHAPTER 187.

An Act to provide for the Payment of Succession Duties in Certain Cases.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as "The Succession Duties Act." R. S. M., c. 161, s. 1.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—

(a) **"Property."**—the expression "property" includes real and personal property of every description, and every estate or interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives;

(b) **"Aggregate Value."**—the expression "dutiable value" means the fair market value of the property before any debts, obligations or liabilities are deducted therefrom, and, in determining such aggregate value for the purpose of ascertaining whether any estate is wholly or partially exempt from payment of duties under this Act or the percentage of duties payable on the property in this Province, there shall be included the value of any property of the deceased situate outside of Manitoba at the date of his death and also any property of any of the kinds referred to in paragraphs (b), (c) and (d) of section 5, which formerly belonged to the deceased whether within or without the Province;

(c) **"Dutiable Value."**—the expression "dutiable value" means the fair market value of the property after payment of all debts, obligations and liabilities at date of death, but not including testamentary or other like expenses. R. S. M., c. 161, s. 2; 4-5 Edw. 7, c. 45, s. 1; 10 Ed. 7, c. 70, s. 4; 1 Geo. 5, c. 60, s. 1.

APPLICATION OF ACT.

3. **To Estates of Persons Dying After July 1st, 1893.**—

This Act shall be deemed to have gone into effect as respects the estate of persons dying on or after the first day of July in the year 1893. R. S. M., c. 161, s. 3.

4. **When not to Apply.**—This Act shall not apply,—

(a) **Estates of not Over \$4,000 Exempt.**—to any estate, the dutiable value of which does not exceed four thousand dollars, unless the aggregate value of the estate, including any portion or portions thereof situated out of Manitoba, is such that if the whole estate were in Manitoba the dutiable value would exceed four thousand dollars, nor

(b) **When Estates not Exceeding \$25,000 to be Exempt.**—to property passing under a will, intestacy or otherwise, to or for the use of a resident or residents of the Province, and being the father, mother, husband, wife, child, grandchild, grandparent, daughter-in-law or son-in-law of the deceased, or one or more of such persons, where the aggregate value of the property so passing, including property not situated in Manitoba, does not exceed twenty-five thousand dollars, and when the person leaving such

estate was and had been for at least six months prior to his death domiciled in Manitoba. 4-5 Ed. 7, c. 45, s. 2; 1 Geo. 5, c. 60, ss. 2 and 3.

Re Muir Estate (1915), 28 W. L. R. 358; 6 W. W. R. 995; 18 D. L. R. 144; 24 Man. R. 310; 51 S. C. R. 428.

M., who died in June, 1908, had his domicile in Manitoba and, under averbal agreement, had erected elevators for L., also domiciled in Manitoba, on lands belonging to C. P. R. Company in Saskatchewan. Until fully paid for the buildings were to remain the property of M. who was to retain possession and operate the elevators, and all net revenues were to be applied in reduction of the price for which they had been constructed. M. also owned lands in Saskatchewan, known as the "Kirkella Lands," which he had agreed to sell to purchasers under agreements under seal, in his possession in Manitoba at the time of his death, by which he remained owner until they had been fully paid for and then the lands were to be conveyed to the purchasers. The agreements contained no specific covenant to pay the price of the lands. The executors denied the right of Manitoba to collect succession duties in respect of these debts under Manitoba "Succession Duties Act," R. S. M. (1902), c. 161, s. 5, as re-enacted by 4 and 5 Edw. VII., c. 45, s. 4.—*Per curiam*. The debt due under the contract with L. constituted property within Manitoba and, as such, was liable for succession duty as provided by the Manitoba statute. Also that under the agreements for sale of the "Kirkella Lands" a covenant to pay should be implied and, consequently, they were specialty debts which, as such, constituted property within Manitoba and were liable for succession duty there.—The duties imposed by Manitoba "Succession Duties Act" are direct taxation and, consequently, the legislation imposing them is *intra vires* of the provincial legislature.

PROPERTY LIABLE AND AMOUNT OF DUTY.

5. Properties Liable for Duty. — Save as aforesaid the following property shall be subject to a succession duty as hereinafter provided, to be paid for the use of the Province over and above the fees payable under "The Surrogate Courts Act,"—

(a) **All Property Within Province, Whether Deceased was Domiciled Here or not.**—all property situate within this Province, and any interest therein or income therefrom, whether the deceased person owning the same or entitled thereto was domiciled in Manitoba at the time of his death or was domiciled elsewhere;

(b) **Property Voluntarily Transferred in Contemplation of Death.**—all property situate as aforesaid, or any interest therein or income therefrom, which shall be voluntarily transferred by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, bargainor, vendor or donor, or made or intended to take effect, in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property, or the income thereof;

(c) **Donationes Mortis Causa or Voluntary Dispositions Made Within Twelve Months Before Death.**—any property situate as aforesaid taken as a *donatio mortis causa* made by any person dying, purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or other-

wise, which shall not have been *bona fide* made twelve months before the death of the deceased, including property taken under any gift whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforth retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise;

(d) **Property Transferred by Owner to Himself and Some Other Person or Persons Jointly.**—Any property situate as aforesaid to which a person, at the time of his death, was entitled and which in his lifetime he has caused to be transferred to or vested in himself and any other person or persons jointly, whether by disposition or otherwise, so that the beneficial interest therein, or some part thereof, passes or accrues by survivorship on his death to such other person or persons, including also any purchase or investment effected by the person who was absolutely entitled to the property, either by himself alone or in concert or by arrangement with any other person;

(e) **Property Brought into Province for Administration.**—Any property of a deceased person, domiciled in Manitoba, brought into this Province by his executors or administrators for administration or distribution. 4-5 Ed. 7, c. 45, s. 4; 9 Ed. 7, c. 69, s. 1; 10 Ed. 7, c. 70, s. 3; 1 Geo. 5, c. 60, s. 4.

6. Scale of Duties to be Levied Where no Property Outside of Manitoba.—In all cases where the deceased left no property outside of Manitoba, which would be liable to succession duties under this Act if it had been situated therein, the duty payable upon all property liable to duty under this Act shall be computed upon the dutiable value of such property according to the following table:

1 Dutiable value of the whole estate.	Percentages on shares passing to				
	2	3	4	5	6
	Grandfather, grandmother, father, mother, husband, wife, child, grandchild, son-in-law or daughter-in-law	Any one relative named in column 2 getting more than \$50,000	Any other lineal ancestor or descendant	Any one relative referred to in column 4 getting more than \$50,000	Any other persons or beneficiaries
Up to \$25,000.....	1	1	1	1	5
Over \$ 25,000 to \$ 50,000....	1 1/2	1 1/2	2	1 1/2	5 1/2
Over \$ 50,000 to \$ 75,000....	1	2	3	4	5
Over \$ 75,000 to \$100,000....	2	3	4	5	6
Over \$100,000 to \$150,000....	3	4	5	6	7
Over \$150,000 to \$200,000....	4	5	6	7	8
Over \$200,000 to \$250,000....	5	6	7 1/2	8	10
Over \$250,000 to \$300,000....	5 1/2	6 1/2	7 1/2	8 1/2	10
Over \$300,000 to \$350,000....	6	7 1/2	8	9	10
Over \$350,000 to \$400,000....	6 1/2	7 1/2	8 1/2	9 1/2	12 1/2
Over \$400,000 to \$500,000....	7 1/2	8	9	10	12 1/2
Over \$500,000 to \$600,000....	7 1/2	8 1/2	9 1/2	10 1/2	12 1/2
Over \$600,000 to \$700,000....	8	9	10	11	15
Over \$700,000 to \$800,000....	8 1/2	9 1/2	10 1/2	11 1/2	15
Over \$800,000 and upwards....	9	10	11	12	15

Share of any one Person of Classes in Column 2 not Exceeding \$2,000 to be Exempt.—Provided that, where the whole

value of any property bequeathed or passing to any one person of any of the classes mentioned in column 2 of the above table, under a will or intestacy, does not exceed two thousand dollars, the same shall be exempt from payment of the duty imposed by this section.

(2) When there are beneficiaries of different classes according to the above table to share in the estate, the share of each shall be ascertained and the duty payable upon the whole estate shall be the sum of the duties chargeable upon the respective shares calculated in accordance with the said table and under the classification of the estate by value as shown in the first column of such table. 1 Geo. 5, c. 60, s. 4, *part*.

Re T. D. Smith Estate (1916), 34 W. L. R. 834; 10 W. W. R. 1090.

The question as to the validity of a residuary devise in a will coming on before the court on originating notice, all parties were ordered to be represented by counsel except the Crown. The point was not determined, a settlement approved by the court being entered into. Subsequently the Crown claimed succession duties at 10 per cent. on the whole estate. R. S. M. (1913), c. 187, s. 6, column 6.—*Held*, that the approval of the settlement was not in any sense or to any extent a judicial determination of the question originally submitted to the court, that the Crown was not bound by it in any event and that the duty was payable at the rate of 10 per cent.

7. Scale of Duties Where Deceased Left Property Outside of Manitoba.—Illustration.—In case the deceased left property outside of Manitoba which, if it had been situated therein, would have been liable to succession duties under this Act, it shall be the duty of the Provincial Treasurer to ascertain and determine the aggregate value of the estate of the deceased as defined by this Act, and the total amount of what would be the dutiable value of the whole estate if it had all been situate in Manitoba; and the percentages of duty payable upon that portion of the estate situate in Manitoba shall be the same as if all the property had been situated in Manitoba; for example, if A's estate consists of \$100,000 dutiable value in Manitoba and \$400,000 dutiable value elsewhere, the percentage of duty chargeable on the \$100,000 shall, in the case of a beneficiary being a near relative, be seven instead of two. 1 Geo. 5, c. 60, s. 4, *part*.

8. Pro Rata Levies on Whole Estate.—All duties under this Act shall be levied and collected pro rata upon the whole of the estate of the deceased person liable to the duty. 1 Geo. 5, c. 60, s. 4, *part*.

ASCERTAINING VALUE OF ESTATES.

9. Executors, et al., to File Inventory.—An executor or administrator applying for letters probate or letters of administration to an estate in respect of which a duty is payable under this Act, shall, before the issue of such letters to him, make and file with the surrogate clerk a full, true and correct statement under oath showing (a) a full itemized inventory of all the property of the deceased person and the market value at the date of the death, and (b) the several persons to whom the same will pass under the will or intestacy so far as known and the degree of relationship, if any, in which they stand to the deceased. R. S. M., c. 161, s. 6, *part*; 9 Ed. 7, c. 69, s. 3, *part*.

10. When Appraisement to be Directed.—If the Provincial Treasurer is not satisfied with the value so sworn to, the surrogate clerk shall, at the instance of the Provincial Treasurer, his solicitor or agent, direct in writing that the sheriff of the judicial district in which any property subeject to the payment of the said duty is situate shall make a valuation and appraise the said property. R. S. M., c. 161, s. 7.

11. Valuation of Property by Sheriff.—Sheriff's Fees.—In such case the sheriff shall forthwith give due and sufficient written notice to the executors or administrators and to such other persons as the surrogate clerk may by order direct, of the time and place at which he will appraise such property and he shall appraise the same accordingly at its fair market value and make a report thereof in writing to the surrogate clerk, together with such other facts in relation thereto as the surrogate clerk may by order require, and such report shall be filed in the office of the surrogate clerk. The sheriff shall be entitled to receive the sum of five dollars a day for services performed under this Act, and his actual and necessary travelling expenses, and the same shall be paid to him by the Provincial Treasurer. R. S. M., c. 161, s. 8.

12. Mode of Assessing Property Liable to Duty.—The surrogate clerk shall, upon receiving the report of the sheriff, forthwith assess and fix the then cash value of all estates, interests, annuities and life estates or terms of years growing out of such estate, and the duty to which the same is liable, and shall immediately give notice thereof, by registered letter, to such parties as by the rules of the Court of King's Bench would be entitled to notice in respect of like interests in an analogous proceeding; and the surrogate clerk may, and in every proper case shall, where infants who have no guardian are interested, notify the official guardian *ad litem* of infants' estates to represent the interest of said infants, and the value of every future or contingent or limited estate, income or interest shall, for the purpose of this Act, be determined by the rule, method and standards of mortality and of value, which are employed in ascertaining the value of policies of life insurance and annuities, for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum. R. S. M., c. 161, s. 9.

13. Appeals from Appraisement or Assessment.—Any person dissatisfied with the appraisement or assessment may appeal therefrom to the judge of the Surrogate Court in which application has been made for letters probate or letters of administration within thirty days after the making and filing of such assessment, and upon such appeal the judge shall have jurisdiction to determine all questions of valuation and of the liabilities of the appraised estate or any part thereof for such duty, and the decision of the judge shall be final, unless the property in respect of which such appeal is taken shall exceed in value the sum of ten thousand dollars, when a further appeal shall lie from the decision of the judge of the Surrogate Court to the Court of Appeal, whose decision may be further appealed from just as if it were a decision in an action commenced in the Court of King's Bench.

(2) Practice Governing Such Appeals.—The law and practice governing appeals from the decision of a County Court to the

Court of Appeal from time to time in force shall govern such appeal from the judge of the Surrogate Court to the Court of Appeal. R. S. M., c. 161, s. 10; 1 Geo. 5, c. 60, s. 6.

14. Provincial Treasurer may Demand Certain Information.—And any other Information Necessary in Ascertaining Amount of Duty Payable.—Forms.—The Provincial Treasurer may at any time require information to be given to him by affidavit or statutory declaration containing full particulars as to all property, real and personal, left by the deceased whether situate within or without the Province, and as to the location of each parcel of real property belonging to any estate, whether vested in the deceased or held under mortgage or agreement of sale, and whether situated within or without the Province, and as to any property within or without the Province, the title to which is vested in some other person but the real ownership or control of which was in the deceased, with a statement whether or not any property either within or without the Province has been conveyed or transferred to any person within one year preceding the date of the death, and, if so, to whom and for what consideration; also information as to the date of the death and the residence of the deceased person at that date and for six months prior thereto, and any other information which he may deem necessary to enable him to ascertain the true condition of the whole estate and the proper amount of duty payable (such information to be given on forms provided by the Provincial Treasurer if he shall furnish such forms), and until such information is given, the issue of probate or letters of administration shall be delayed. 1 Geo. 5, c. 60, s. 5.

PAYMENT OF DUTY.

15. Duty to be Paid or Secured Before Issue of Letters.—An executor or administrator, except an official administrator, shall, before the issue of letters probate or letters of administration, pay to the Provincial Treasurer the duty called for by this Act, or deliver to the surrogate clerk a bond in a penal sum equal to ten per centum of the sworn value of the property of the deceased person liable to succession duty, or such further sum as the Provincial Treasurer may deem sufficient, executed by himself and two sureties, to be approved by the surrogate clerk, conditioned for the due payment to His Majesty of any duty to which the property of the deceased coming to the hands of such executor or administrator may be found liable, or furnish such other security in lieu of such bond as may be satisfactory to the judge of the Surrogate Court. R. S. M., c. 161, s. 6, *part*; 9 Ed. 7, c. 69, s. 3, *part*.

16. Duties to be Payable Within Six Months from Death.—The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased, or within six months thereafter, and if the same are paid within six months no interest shall be charged or collected thereon, but if not so paid interest at the rate of six per centum per annum shall be charged and collected from the death of the deceased, and such duties, together with the interest thereon, shall be and remain a lien upon the property in respect of which they are payable until the same are paid. R. S. M., c. 161, s. 13; 9 Ed. 7, c. 69, s. 7; 10 Ed. 7, c. 70, s. 1.

17. Extension of Time for Payment of Duty.—By Judge.—The judge of the Surrogate Court may make an order upon the

application of any person liable for the payment of said duty, extending the time fixed by law for payment thereof where it appears to such judge that payment within the time prescribed by this Act is impossible owing to some cause over which the person liable has no control.

(2) **By Order of Lieutenant-Governor-in-Council.**—The Lieutenant-Governor-in-Council, upon proof to his satisfaction that payment of the duty within the time limited by section 16, would be unduly onerous, may by order-in-council extend the time for the payment to such date and upon such terms as may be deemed proper, and the duty shall become due and be payable as in the said order-in-council set forth. R. S. M., c. 161, s. 14; 9 Ed. 7, c. 69, s. 8.

ENFORCEMENT OF PAYMENT OF DUTY.

18. Proceedings to Enforce Payment of Duty.—If it appears to the judge of the Surrogate Court that any duty accruing under this Act has not been paid according to law, whether the liability for the same is disputed or not, he shall by summons direct the persons interested in the property liable to the duty to appear before him on a day certain to be therein named and show cause why said duty should not be paid.

(2) Such summons shall be heard and disposed of according to the practice in contentious cases in the Surrogate Court, and the judge may make an order for the payment of the amount of the duty, with or without costs, and such order may be filed in the Court of King's Bench and enforced in the same manner as an ordinary judgment in such court. 1 Geo. 5, c. 60, s. 7, *part*.

19. Appeal When Amount in Dispute Exceeds \$500.—The decision of the judge shall be final, unless the amount of the duty sought to be recovered exceeds five hundred dollars, when an appeal shall lie from such decision to the Court of Appeal, whose decision may be further appealed from just as if it were a decision in an action commenced in the Court of King's Bench.

(2) The law and practice governing appeals from the decision of a County Court to the Court of Appeal from time to time in force shall govern such appeal from the Judge of the Surrogate Court to the Court of Appeal. 1 Geo. 5, c. 60, s. 7, *part*.

DUTIES AND POWERS OF EXECUTORS, ETC., AS TO DUTY.

20. Transfer of Shares in Provincial Corporations Held by Foreign Executors or Administrators.—No foreign executor or administrator shall assign or transfer any debentures, bonds, stocks or shares of any bank or other corporation whatsoever having its head office in Manitoba, standing in the name of the deceased person, or in trust for him, until the duty is paid or security is given as required by section 15, and any such bank or corporation allowing a transfer of any debentures, bonds, stocks or shares contrary to this section shall be liable for such duty. 9 Ed. 7, c. 69, s. 4.

21. Administrator, et al, to Deduct Duty Before Delivering Property.—Any administrator, executor or trustee having in charge or trust, any estate, legacy, or property subject to the said duty shall deduct the duty therefrom, or collect the duty thereon upon the appraised value thereof, from the person entitled to such

property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon. R. S. M., c. 161, s. 15.

22. Power to Sell for Payment of Duty.—Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay said duty in the same manner as they may be or are enabled by law so to do for the payment of the debts of the testator or intestate. R. S. M., c. 161, s. 16.

23. Duty to be Paid to Provincial Treasurer.—Every sum of money retained by an executor, administrator or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Provincial Treasurer. R. S. M., c. 161, s. 17.

24. Refunding Duty Upon Subsequent Payment of Debts.—Where any debts shall be proven against the estate of a deceased person, after the payment of legacies or distribution of property from which the said duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee, if the said duty has not been paid to the Provincial Treasurer, or by the Treasurer if it has so been paid. R. S. M., c. 161, s. 18.

GENERAL PROVISIONS.

25. Requests, etc., to Executors or Trustees.—Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commissions or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess shall be liable to said duty, and the judge of the Surrogate Court having jurisdiction in the case shall fix such compensation. R. S. M., c. 161, s. 11.

26. Costs.—The costs of all proceedings taken under this Act shall be in the discretion of the court or judge, and shall be upon the County Court scale, unless and until another tariff shall be provided, save as to the costs of an appeal, and then upon the scale of the court appealed to. R. S. M., c. 161, s. 20.

27. Fees of Judges and Surrogate Clerks.—The judges and clerks of the several Surrogate Courts shall be entitled to take for the performance of duties and services under this Act, similar fees to those payable to them respectively under and by virtue of "The Surrogate Courts Act" and rules for similar proceedings. R. S. M., c. 161, s. 21.

28. Security to be Given by Surrogate Clerks.—Every surrogate clerk before entering on the duties of his office, shall deliver to the Provincial Treasurer a bond or other security or securities in such sum and with such sufficient surety or sureties, as may be approved of by the Lieutenant-Governor-in-Council, for the due and proper performance of the duties imposed upon such surrogate clerk by this Act, and the provisions of "The Manitoba Public Officers Act" and "The Official Securities Act" relating to the giving of security by such officers, shall, where not inconsistent with this Act, apply to such bonds or other securities. R. S. M., c. 161, s. 22.

29. Lieutenant-Governor-in-Council may make Regulations.—The Lieutenant-Governor-in-Council may make regulations for carrying into effect the provisions of this Act, which shall forthwith be published in *The Manitoba Gazette*, and such regulations shall be laid before the Legislative Assembly forthwith, if the Legislature is in session at the date of such regulations, and if the Legislature is not in session such regulations shall be laid before the House within the first fourteen days of the session next after such regulations are made. R. S. M., c. 161, s. 23.

PROVINCE OF ALBERTA.

SUCCESSION DUTY ACT.

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CHAPTER 5.

An Act respecting Succession Duties.

(Assented to October 22, 1914).

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. Short Title.—This Act may be cited as "*The Succession Duties Act*."

2. Application.—This Act shall apply—

- (a) To the property of persons in respect of whose estate no application for letters probate, or letters of administration, or for the resealing of letters probate, or letters of administration, shall have been made before the date of its passing;
- (b) To the property of persons dying on or after the date of its passing.

INTERPRETATION

3. In this Act—

Property.—"Property" shall include real and personal property of every description and every estate or interest therein capable of being devised or bequeathed by will, or of passing on the death of the owner to his heirs or personal representatives.

Child.—"Child" shall include any child of the deceased, born in lawful wedlock, or any person adopted before the age of twelve years by the deceased as his child, or any infant to whom the deceased for not less than ten years immediately prior to his death, stood in *loco parentis*, or any lineal descendant of such child, adopted child, or infant as aforesaid, born in lawful wedlock.

Passing.—"Passing" means passing either immediately on the death of a person, or after an interval, either certainly or contingently, and either originally or by way of substitutive limitation, whether the deceased at the time of his death was domiciled in the province or elsewhere.

Aggregate Value.—"Aggregate value" means the fair market value of the property of a deceased person, both within and without the province, passing on his death, before the debts, encumbrances and other allowances authorized by this Act are deducted therefrom.

Net Value.—"Net Value" means the aggregate value less the debts encumbrances and other allowances authorized by this Act.

Judge.—"Judge" means a Judge of the Supreme Court of Alberta.

Court.—"Court" means the Supreme Court of Alberta.

4. Determination of Net Value.—In determining the net value of any property of a deceased person for the purposes of the payment of succession duties hereunder, the aggregate value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses, and for his debts and encumbrances, and any debt or encumbrance for which an allowance is made shall be deducted from the aggregate value of the property, but an allowance shall not be made.

(a) **Cases in Which Allowances not to be Made.**—For debts incurred by the deceased, or encumbrances created by a disposition made by him unless such debts or encumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, and take effect out of his interest; not

(b) For any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained; nor

(c) More than once for the same debt or encumbrance charged with different portions of the estate; nor

(d) For the expenses of administration of the estate except the expense of procuring letters probate or letters of administration, not including solicitor's fees; nor

(e) For the expenses of the execution of any trust.

5. Cases in Which Act does not Apply.—This Act shall not apply as respects the payment of succession duties.

(1) **Where Net Value does not Exceed Five Thousand Dollars.**—To property passing under a will, intestacy or otherwise to or for the use of any person or beneficiary whatsoever, where the net value of the property of the deceased does not exceed five thousand dollars; nor

(2) **As to Certain Relatives Resident in the Province.**—To property passing in the manner aforesaid, to or for the use of a resident or residents of the province, being the grandfather, grandmother, father, mother, husband, wife, child, son-in-law, or daughter-in-law of the deceased where the net value of the property of the deceased does not exceed twenty-five thousand dollars.

6. Property Deemed to Pass on Death.—Upon the death of any person, the following, in addition to any other property passing shall, for the purposes of this Act, be deemed to pass on the death of such person.

(a) **Property Voluntarily Transferred in Contemplation of Death.**—All property of such deceased person or any interest therein or income therefrom, which shall be voluntarily transferred by transfer, deed, grant, bargain, sale or gift, made in contemplation of the death of the transferor, grantor, bargainor, vendor or donor, or made, or intended to take effect in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof;

(b) **Donationes Mortis Causa Certain Voluntary Dispositions, etc.**—Any property taken as a *donatio mortis causa*, or under a disposition purporting to operate as an immediate grant or gift *inter vivos*, whether by way of grant, transfer, delivery, declaration of trust, or otherwise, which shall not have been *bona fide* made two years before the death of the deceased, including property taken under any grant or gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the grant or gift, and thenceforward retained to the entire exclusion of the donor, and of any benefit to him by contract or otherwise;

(c) **Property Transferred by Owner to Himself Jointly With Some Other Person.**—Any property which a person having been absolutely entitled thereto, has caused or may cause to be conveyed or transferred to or vested in himself, and any other person, jointly, whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof, passes or accrues by survivorship on his death to such other person, including also any purchase or investment effected by the person who was absolutely entitled to the property, either by himself alone, or in concert or by arrangement with any other person;

(d) **Property Passing Under Settlement.**—Any property passing under any past or future settlement including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, made by deed or

other instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof, for life, or any other period, determinable by reference to death, is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property or the proceeds of sale thereof, or to otherwise re-settle the same or any part thereof;

(e) **Annuities, etc.**—Any annuity or other interest purchased or provided either by any person alone, or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise, on the death of the deceased;

(f) **Property of which Deceased was Competent to Dispose.**—Any property of which a person was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein, or such general or limited power as would if he were *sui juris*, enable him to dispose of the property as he should think fit, or to dispose of the same for the benefit of his children, or some of them, whether the power is exercisable by instrument *inter vivos*, or by will, or both, including the power exercisable by a tenant in tail, whether in possession or not, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him, whether the concurrence of any other person was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose.

7. Save as otherwise provided, all property of any person, situate within the province, and passing on his death shall be subject to succession duties at the rate or rates set forth in the following table, the percentage payable on the share of any person or beneficiary, being fixed, by the following or by some one or more of the following considerations as the case may be:

- (a) Net value of the property of the deceased;
- (b) Place of residence of person or beneficiary;
- (c) Value of property taken, wherever situate;
- (d) Degree of kinship or absence of kinship to the deceased.

ALBERTA SUCCESSION DUTY ACT.

PERCENTAGES PAYABLE ON SHARES PASSING TO OR FOR THE USE OF						
1	2	3	4	5	6	7
Net value of the property of the deceased (Section 3).	Grandfather, grandmother, father, mother, husband, wife, child, son-in-law or daughter-in-law of the deceased being a resident or residents of the province.	Any person or persons mentioned in column 2 not being a resident or residents of the province.	Any person or persons mentioned in column 2 or 3 taking more than \$50,000, wherever situate.	Any other lineal ancestor of the deceased, a brother or sister of the deceased or any lineal descendant of such brother or sister or a father or mother of the deceased, or any lineal descendant of such last mentioned brother or sister.	Any person or persons mentioned in column 5 taking more than \$50,000, wherever situate.	Any other person or beneficiary.
Exceeding \$5,000 and not exceeding \$25,000. . . .	(Section 5)	1		5		10
Exceeding \$25,000 and not exceeding \$100,000.	1½	2	6	6	7½	11
Exceeding \$100,000 and not exceeding \$200,000.	2½	3	7½	7½	8½	12½
Exceeding \$200,000 and not exceeding \$400,000.	5	6	9	9	10	13
Exceeding \$400,000 and not exceeding \$800,000.	8	9	10	10	11	14
Exceeding \$800,000 and not exceeding \$2,000,000.	9	10	12	12	13	15
Exceeding \$2,000,000. . . .	10	12	14	14	15	16

Proviso.—Provided, however, that no duty shall be payable on the share passing to any person mentioned in columns two or three, where the value of the property taken by such person, wherever situate, does not exceed two thousand dollars.

(2) **Property Brought into Province for Administration, etc.**—Property brought into the province for administration or distribution shall be deemed to be property situate within the province.

(3) **Duties to be Paid to Provincial Treasurer.—Duties Over and Above Probate Fees.**—The succession duties herein provided for shall be paid to the Provincial Treasurer, for the use of the province, and shall be over and above the probate or other fees prescribed from time to time by law.

8. Request or Devise to Executor or Trustee in Lieu of Commission.—Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commission or allowance, and the said bequest or devise exceeds what would be a reasonable compensation for the services of such executor, or trustee, such excess shall be liable to duty, and a reasonable compensation shall, unless otherwise agreed upon the Provincial Treasurer, be fixed by a judge.

9. Not to Affect Bona Fide Transfers.—Nothing in this Act contained shall render liable for duty any property *bona fide* transferred for a consideration that is of a value substantially equivalent to the property transferred.

PROCEDURE.

10. (1) Filing of Affidavits.—On all applications for letters probate or letters of administration, or for the resealing of letters probate or letters of administration made to any District Court in the Province, the applicant, or one of the applicants, shall at the time of filing the papers required by the practice of the said court on such application, make and file with the clerk thereof two duplicate original affidavits of value and relationship with inventories annexed in form No. 1 in Schedule 1 hereto, and shall at the same time pay to the clerk such fee as may be fixed by the Lieutenant-Governor-in-Council under the provisions of section 51 for the examination of any such affidavit by the Provincial Treasurer.

(2) Such affidavits shall be made and filed in all cases without regard to the nature or value of the property of the deceased.

11. Determination of Duty.—The clerk shall forthwith on receipt of such duplicate original affidavits, and fee, forward one of such affidavits to the Provincial Treasurer, who shall determine the amount (if any) on which property or any part thereof is subject to succession duty, or will become subject thereto on the happening of a contingency, and shall, as soon as may be, forward a statement of the same to the clerk, who shall on receipt thereof either require immediate payment, or the giving of security therefor by bond in form No. 2 in Schedule 1 hereto, or with regard to the amount in which the property or any part thereof will become subject to duty on the happening of a contingency, require security to be given by bond in a form to be approved as herein-after provided.

12. Penalty of Bond.—Every bond required to be given under the last preceding section shall be in a penal sum equal to ten per centum of the sworn value of the property of the deceased liable, or which may become liable to succession duty, or in such further sum as the Provincial Treasurer may deem sufficient, and shall be conditioned for the due payment to His Majesty of any duty to which the property of the deceased coming into the hands of the said applicant or applicants, is or may be found liable.

(2) Parties to Bond.—Liability.—Every such bond shall be executed by the applicant or by all the applicants if there is more than one, and a guaranty company approved by the Provincial Treasurer, as surety, and the parties executing the bond shall be bound jointly and severally in the whole amount of the penalty thereof; provided, however, that where it is made to appear to the satisfaction of the Provincial Treasurer that an applicant is unable to secure an approved guaranty company as surety, the security to be given may be of such nature, and in such form and amount as the Provincial Treasurer may direct.

13. Clerk to Forward Bond to Provincial Treasurer.—The clerk shall upon the receipt of any bond required to be taken under the provisions of this Act, forward it to the Provincial Treasurer for approval.

14. Approval and Filing.—Upon the approval of any such bond, the same shall be filed in the office of the Provincial Treasurer.

15. Consent of Provincial Treasurer to Issue of Letters.—Upon the payment of the amount in which the property is or may become liable for succession duties, or upon the approval of any bond or other security taken to secure the payment thereof, the Provincial Treasurer shall, subject to his right under section 22 to require further information, consent to the issuing of letters probate or letters of administration or to the resealing thereof as the case may be, but in no case shall letters be issued or resealed, until such consent is given.

16. Duties Payable out of Share.—The duties imposed by this Act shall be payable out of the share of each person or beneficiary entitled to share in the property of the deceased, according to the rate applicable as aforesaid to such person or beneficiary.

17. Cases in Which Executor Personally Liable.—Any executor or administrator who, without reasonable excuse, the proof whereof shall lie on him, shall, in the inventories required to be filed by this Act, either fail to include any property of the deceased, or make any incorrect statement with respect to the value or mode of passing of any property of the deceased or with respect to the degree of relationship to the deceased, or the place of residence of any person or beneficiary, shall be liable personally to pay to the Provincial Treasurer any deficiency in duty arising by reason of such failure or incorrect statement.

18. Where no Probate Necessary, or Where Probate not Taken Out.—Where, in respect of any property passing on the death of any person, no application for letters probate, or letters of administration or for the resealing thereof, is necessary, or if necessary, has not been made, every person to whom any property passes

shall within two months from the date of death of the deceased, or within such later time as the Provincial Treasurer shall allow, forward to the Provincial Treasury a sworn statement to the best of his knowledge, information, and belief, of the nature and value of the property passing.

19. Future and Contingent Estates.—Where property subject to succession duty under this Act includes any future or contingent estate, income, or interest, the duty on such estate, income, or interest may be paid within the time limited by section 23 of this Act, and where so paid, the duty shall be on the value of such estate, income or interest computed under section 27 of this Act as at the date of death of the deceased. By consent of the Provincial Treasurer, in writing, duty may be paid after the time so limited and before such estate, income or interest comes into possession; but in the event of such consent, the duty shall then be on a value not less, in any event, than the value of such estate, income, or interest computed under the said section 27 as at the date when the duty is paid; and no deduction shall be made for duty paid or payable on any prior estate, income or interest. The duty on any future or contingent estate, income, or interest if not sooner paid (as in this section provided) shall be payable forthwith when such estate, income, or interest comes into possession, and no deduction shall be made for duty or payable on any prior estate, income, or interest.

20. No Person Beneficially Entitled to Present Income.—Where in respect of any future or contingent estate or interest there is no person beneficially entitled to the present income, or enjoyment, or where there is some part thereof to which there is no person so entitled, the duty on such future or contingent estate or interest, or on such part thereof, as the case may be, shall be payable as provided under sections 19, 21 and 23 of this Act.

21. Commutation.—Notwithstanding the duty may not be payable on any future or contingent estate, income, or interest until the time when the right of possession or actual enjoyment accrues, any executor, administrator, guardian, trustee, or person owning a prior interest, when such executor, administrator, guardian, trustee, or person has the custody or control of the property, may agree upon or commute for a present payment out of the property in discharge of the said duty; and the Provincial Treasurer may, upon the application of any such person, commute the succession duty, which would or might but for the commutation become payable in respect of such interest, for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty and interest; and on receipt of such sum the Provincial Treasurer shall give a certificate of discharge from such duty provided that such certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts except a *bona fide* purchaser for valuable consideration without notice.

22. Requiring of Further Information by Provincial Treasurer.—The Provincial Treasurer may at any time require such information on oath or otherwise, as is in his opinion necessary to enable him to ascertain the amount of duty payable on any property, and until such information is furnished to his satisfaction letters probate or letters of administration shall not issue nor be resealed.

23. When Duties Payable.—Extension by Lieutenant Governor in Council.—The duties imposed by this Act shall be due and payable on the death of the deceased, or within six months thereafter, and if the same are paid within six months no interest shall be charged or collected thereon, but if not so paid, interest at the rate of six per centum per annum from the date of death of the deceased, shall be charged and collected, and such duties together with the interest thereon shall be and remain a lien upon the property in respect of which they are payable, until the same are paid; provided, however, that the Lieutenant Governor in Council may, upon satisfactory proof that payment of the duty within the time above limited, would be unduly onerous on the estate, extend the time for payment by order and the duty shall be due and payable as in the said order set forth.

24. Granting of Certificate by Provincial Treasurer.—The Provincial Treasurer may, if satisfied that the full amount of succession duty in respect of any property has been paid, or secured to his satisfaction, grant a certificate of discharge which shall discharge from any further claim for such duty the property mentioned in the certificate, but shall not in the case of fraud or failure to disclose material facts operate as a discharge of any person or property liable except property in the hands of a *bona fide* purchaser for valuable consideration without notice.

PROCEDURE OF VALUATION AND ASSESSMENT.

25. Valuation by Commission.—Where the Provincial Treasurer is not satisfied with the sworn valuations in any inventory filed, or that all property which should have been included therein, has been included, he may personally or by his solicitor or agent appoint a commissioner or commissioners to make a valuation of any property disclosed in the inventory, or of any property wrongfully omitted therefrom, and to do such other matters or things in connection therewith as may be referred to him.

26. (1) Report of Commissioner.—Such Commissioner or commissioners shall, as soon as may be after appointment, and upon ten days' written notice to the solicitor acting on behalf of the parties interested, of the time and place at which the valuation will be made, proceed to value the said property at its fair market value as at the date of death of the deceased, and shall make and file with the Provincial Treasurer a written report in duplicate of such valuation and of any other matter referred. One duplicate of the said report shall be forwarded by the Provincial Treasurer to the solicitor acting for the parties interested in the property.

(2) Powers of Commission.—Any such commissioner or commissioners shall have all the powers which may be conferred upon commissioners under an Act respecting Inquiries Concerning Public Matters, being chapter 2 of the Statutes of 1908, and may require production of any books, papers, or other writings, or documents, of any company or corporation in which the deceased at any time held stocks, shares, bonds, debentures or other securities, or of any company or corporation to which property was transferred by the deceased, and may appoint an auditor or other competent person to make such inspection and report as he may deem necessary.

(3) Such commissioner or commissioners shall be entitled to receive such reasonable sum for services and travelling expenses as

may be allowed by the Provincial Treasurer and the same shall be paid by him.

27. Assessment by Provincial Auditor.—If the Provincial Treasurer, his solicitor or agent and the other parties interested are unable to agree upon the cash value as at the date of the death of the deceased, of any annuity, term of years, life estate, income or other estate, the Provincial Auditor shall assess and fix the same, and the amount of duty payable in respect thereof, and shall immediately file his assessment in the office of the Provincial Treasurer and give notice thereof to the solicitor acting on behalf of the parties interested.

28. Appeal.—Any interested person dissatisfied with any such valuation or assessment may appeal therefrom to a judge within thirty days after the filing of such valuation or assessment whichever shall be later, and upon such appeal the said judge shall have jurisdiction to determine all questions of valuation and the liability of the property or any part thereof to duty and the decision of the said judge as to all questions of valuation shall be final.

29. Duties Recoverable as a Debt.—Any sum payable under this Act shall be recoverable with costs of suit as a debt due to His Majesty from any person liable therefor, by action in the Supreme Court of the province in any judicial district, and it shall not in any case be necessary to take the proceedings authorized by sections 25 to 28, inclusive.

30. Executor not to Assign Stocks, etc., Without Production of Certificate of Provincial Treasurer.—Any executor or administrator who shall sell, assign, transfer or dispose of any stocks, shares, bonds or debentures the property of any deceased person, without payment to the Provincial Treasurer of the amount in which the same are liable for succession duty, if any, or the giving of security therefor shall be liable personally to pay to the Provincial Treasurer the amount of such duty, and any company or corporation, permitting such assignment, transfer or disposal, shall also be liable to the Provincial Treasurer for the duty payable in respect thereof.

31. Notice of Passing of Accounts to be Served on Provincial Treasurer.—In any case where security has been given for the payment of succession duty, at least seven days' notice of any appointment for the passing of the accounts of the executor or administrator, shall be served upon the Provincial Treasurer by such executor or administrator or his solicitor, together with a copy of the accounts.

32. Refund of Duty Where Debts Afterwards Proven.—Where any debts shall be proven against the estate of a deceased person, after the payment of legacies or distribution of property from which the duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid him by the executor, administrator or trustee, if such duty has not been paid to the Provincial Treasurer, or by the Provincial Treasurer if it has been so paid; provided that no such repayment shall be made by the Provincial Treasurer after the expiration of two years from the date of death of the deceased.

33. Money Retained for Duty to be Paid to Provincial Treasurer.—Every sum of money paid to an executor, administrator or trustee, for the duty on any property, or retained by him for such purpose, shall be paid by him forthwith to the Provincial Treasurer, or as the Provincial Treasurer may direct.

34. Power to Sell Property to Pay Duty.—Executors, administrators and trustees shall have power to sell so much of the property of the deceased, as will enable the payment of succession duty, in the same manner as they may be enabled by law so to do for the payment of debt of the testator or intestate.

35. Judge may Determine Property Liable to Duty.—A judge shall have jurisdiction upon motion or petition to determine what property is liable to duty under this Act, and the amount thereof.

36. Judge may Order Persons to Show Cause Why Duty has not been Paid.—Practice.—If it appears to a judge that any duty due under this Act has not been paid according to law, he shall, on application of any party interested, make an order directing the persons interested in the property liable to the duty to appear before the court on a day certain to be therein named, and show cause why the said duty should not be paid. The service of such order, and the time, manner, and proof thereof, and fees therefor, and the hearing and determining thereon, and the enforcement of the judgment if the court thereon, shall be according to the practice of the Supreme Court.

37. Action may be Brought Before Time for Payment of Duty.—An action may be brought to determine any question of liability under this Act, although the time for the payment of the duty has not arrived, and such action shall be considered as an ordinary action in the Supreme Court.

38. Right of Attorney General to Require Production, etc.—In any action under this Act the Attorney General or the solicitor acting on behalf of the Provincial Treasurer shall have the same right, either before or after the trial, to require the production of documents, to examine parties or witnesses, and to take such other proceedings in aid of the action as a plaintiff has or may take in an ordinary action.

39. Trial of an Issue.—Where for the better determining of any question raised in any action the Supreme Court deems it advisable to order the trial of an issue or issues, it may give such directions in that behalf as it deems expedient.

40. Reference.—In case the Supreme Court shall think fit at any time to direct a reference, such reference may be to an officer of the court as provided by the Supreme Court Rules, or to any other person.

41. Appeal.—An appeal shall lie in any action brought under this Act wherever an appeal would lie if the action were between subject and subject, and to the like tribunal.

42. Costs.—The costs of all proceedings under this Act shall be in the discretion of the court or judge.

43. (1) Fees.—The clerks of the court shall be entitled to take for the performance of duties and services under this Act fees similar to those payable to them under the rules of the Supreme Court.

(2) A fee of one dollar shall be payable to the Provincial Treasurer for any certificate granted under the provisions of this Act.

44. Declaration that Property Transferred Before Death is Subject to Duty.—Where any property of any person which has, previous to his death, been conveyed or transferred to some other person, is declared liable to duty, the court may declare the duty to be a lien upon the property, and may make such declaration although the amount of such duty has not been ascertained, and where any property which, had it remained in the hands of the person to whom or for whose benefit it was conveyed or transferred by such deceased person, would have been liable for duty, has been conveyed or transferred to any purchaser for valuable consideration, the court may direct the person to whom or for whose benefit the said property was conveyed or transferred by such deceased person as aforesaid, to pay the amount of the duty to which such property would have been subject as aforesaid.

45. Filing of Notice of Lien.—Whenever it is claimed that any land, or any property secured by any mortgage or encumbrance upon land is subject to succession duty, the Provincial Treasurer or the solicitor acting in his behalf, may, when deemed necessary, cause to be filed in the land titles office wherein the certificate of title to such land, or such mortgage or encumbrance is registered, a notice of lien in form 3 in Schedule 1 hereto, or to the like effect.

46. Entry by Registrar.—Upon the receipt of such notice the registrar shall enter the same in the day book and shall make a memorandum upon the certificate of title of the land or upon that of the land mortgaged or encumbered, as the case may be, that the land or mortgage or encumbrance is subject to a lien for succession duty in favour of the Provincial Treasurer.

47. (1) Registrar not to Register any Instrument Unless Subject to Lien.—So long as any notice remains in force the registrar shall not register any instrument purporting to affect the land, mortgage, or encumbrance in respect of which such notice is filed unless such instrument is expressed to be subject to the lien of the Provincial Treasurer for succession duty, but the Provincial Treasurer may, at any time, by letter to the registrar withdraw any such notice and a memorandum of such withdrawal shall be made by the registrar upon the certificate of title on which the memorandum was made.

(2) Any such withdrawal by the Provincial Treasurer shall be without prejudice to his right to file any further or other notice if deemed necessary.

48. Effect of Registration.—Registration by way of such notice shall have the same effect as to priority as the registration of any instrument under The Land Titles Act.

49. Application of Sections 45 to 48.—The preceding sections 45 to 48, both inclusive, shall apply to the property of all persons in respect of which duty is claimed, whether such persons have died before or shall die after the passing of this Act.

50. Remedies to be Additional.—The remedies provided in the preceding sections 45 to 48, both inclusive, shall be in addition to those provided by the other provisions of this Act and nothing contained therein shall affect the right of the Crown to claim a lien independently of the said sections.

51. Lieutenant Governor in Council to Make Rules and Regulations.—The Lieutenant-Governor-in-Council may make rules and regulations for carrying into effect the provisions of this Act and to cover matters not herein provided for, including the fixing of a scale of fees to be paid to the Provincial Treasurer for the use of the Province for the examination of all affidavits or sworn statements filed or submitted under the provisions of this Act, and the same shall be published forthwith in the official gazette.

52. Succession Duty Ordinance Repealed Except as to the Property of Certain Persons.—The Succession Duty Ordinance, being chapter 5 of the Ordinances of 1903 (Second Session) is hereby repealed, except as to the property of any person in respect of whose estate, application for letters probate, or letters of administration, or for the resealing of letters probate, or letters of administration, shall have been made before the date of the passing of this Act.

SCHEDULE 1.

FORM 1.—AFFIDAVIT OF VALUE AND RELATIONSHIP. SUCCESSION DUTIES ACT.

CANADA } IN THE DISTRICT COURT OF THE
PROVINCE OF ALBERTA } DISTRICT OF

In the matter of the estate of _____, late of the _____
of _____, in the _____ of _____, deceased.
I, _____ of the _____ of _____,
in the _____, make oath and say :

That _____ the applicant _____ for letters
to the estate of _____, who died on or about the
day of _____, A.D. 19____, domiciled in _____.

That _____ have made full, careful, and searching inquiry
for the purpose of ascertaining what real and personal property and
effects the said _____ was possessed of, or entitled to, at the
time of h _____ death, together with the market value thereof respectively.

That _____ have according to the best of
knowledge, information and belief, set forth in the Inventory here-
with exhibited, and marked "A," a full, true, and particular account
of all the real and personal estate of the said _____, or of which
the said _____ was possessed, or to which he was entitled at
the time of h _____ death, together with the fair market value as at the
date of death of each and every asset forming part of the said real
and personal estate and particularized in the said Inventory. The
said Inventory includes all real and personal estate over which the
deceased had and exercised absolute power of appointment. The
aggregate value of the said estate as at date of deceased's death was
\$ _____, and the net value thereof was \$ _____.

That have included in the said Inventory every security, debt, and sum of money outstanding, due or payable to or standing to the credit of the said deceased at the time of h death, and in estimating the value thereof have included all the interest due, payable, chargeable and accruing due thereon up to the death of the said deceased.

That, save and except what is set forth in the said Inventory, the said was not, to the best of knowledge, information and belief, at the time of h death possessed of or entitled to any debt or sum of money, or any security, pledge or undertaking for the payment of any money to h on any account whatsoever, or to any leasehold or other personal estate, goods, chattels, or effects in possession or reversion absolutely or contingently or otherwise howsoever.

That in the said Inventory is included all the property of the said situate without the Province of Alberta, as well as the property situate within the Province of Alberta.

That, save and except what is set forth in the said Inventory the said was not, to the best of knowledge, information and belief, at the time of h death seized of or entitled to any real estate in possession, remainder or reversion absolutely or contingently or otherwise howsoever.

That, to the best of knowledge, information and belief, the said deceased did not voluntarily transfer by deed, grant or gift made in contemplation of h death, or made or intended to take effect in possession or enjoyment after h death, any property or any interest therein, or income therefrom to any person in trust or otherwise by reason whereof any person is or shall become beneficially entitled in possession or expectancy in or to the said property or income thereof, save and except as set forth in the said Inventory.

That, to the best of knowledge, information and belief the said deceased did not at any time within two years previous to the date of h death transfer by way of *donatio mortis causa*, or purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration or trust or otherwise, any property whatsoever save and except as set forth in the said Inventory.

That to the best of knowledge, information and belief the said deceased did not at any time previous to the date of h death transfer any property of which property the *bona fide* possession was not assumed by the donee immediately upon the gift, and thenceforth retained to the entire exclusion of the donor or any benefit to h by contract or otherwise, save and except as set forth in said Inventory.

That, to the best of knowledge, information and belief, the said deceased was not at the time of h death a party to any past or future settlement, including any trust, whether expressed in writing, or otherwise, whether made for valuable consideration or not, as between the settlor or any other person, and not taking effect as a will, where by an interest in such property or the proceeds of the sale thereof for life, or any other period determinable by reference to death, was reserved expressly or by implication to the deceased, or whereby the deceased reserved to h self the right by the exercise of any power to h self to reclaim, the absolute interest in such property or the proceeds of the sale thereof, or otherwise resettle the same or any part thereof, save and except as set forth in the said Inventory.

That, to the best of _____ knowledge, information and belief, no annuity or other interest had been purchased or provided by the said deceased, either by himself alone or in concert or by arrangement with any other person, save and except as set forth in the said Inventory.

That _____ have to the best of _____ knowledge, information and belief in the Inventories respectively marked "A" and "B" hereto annexed, set forth the assets, debts and liabilities, of the deceased, and the names of the several persons to whom the property of the said deceased will pass, the degree of relationship, if any, in which they stand to the deceased, the true place of residence of each of them and the nature and value of the property passing to each of these persons respectively.

Sworn before me at _____
 in the County of _____, }
 this _____ day of _____, 19____ }

.....
 A Commissioner, etc.

INVENTORY "A"

IN THE DISTRICT COURT OF THE DISTRICT OF

"*Succession Duty Act.*"

In the matter of the estate of _____ deceased, late of the _____ of
 in the _____ of _____

No. of Parcel.	REAL ESTATE.		Value.	
	Give description and full value of real estate including improvements and set out details of improvements below.			

IMPROVEMENTS ON REAL ESTATE.

NO. OF PARCEL	NATURE AND DESCRIPTION OF IMPROVEMENTS	VALUE	

MORTGAGES AND ENCUMBRANCES ON REAL ESTATE

NO. OF PARCEL	DESCRIPTION OF MORTGAGE OR ENCUMBRANCE	PRIN- CIPAL	INTEREST	TOTAL

MONEYS SECURED BY MORTGAGE.

NAME OF MORTGAGOR AND DESCRIPTION OF PROPERTY MORTGAGED	WHERE MORTGAGE INSTRUMENT FOUND AT DATE OF DEATH	PRIN- CIPAL	INTEREST	TOTAL

CASH.

WHERE SITUATE	PRIN- CIPAL	INTEREST	TOTAL

LIFE INSURANCE.

NAME OF COMPANY	TO WHOM PAYABLE	HEAD OFFICE	PRIN- CIPAL	INTEREST	TOTAL

BOOK DEBTS AND PROMISSORY NOTES.

NAME OF DEBTOR OR PROMISOR	RESIDENCE OF DEBTOR OR PROMISOR	PRIN- CIPAL	INTEREST	TOTAL

STOCKS, SHARES, BONDS AND DEBENTURES.

NUMBER AND DESCRIPTION	INTER- EST DATE	PAR VALUE	MARK- ET VALUE	HOW TRANS- FERABLE	HEAD OFFICE	PRIN- CIPAL	INTEREST	TOTAL

OTHER PROPERTY	WHERE SITUATE	PRIN- CIPAL	INTEREST	TOTAL
Household Goods and Furniture.....				
Farming Implements.....				
Stock in Trade including Good Will of Business.....				
Horses.....				
Horned Cattle.....				
Sheep, Swine and other Domestic Ani- mals.....				
Farm Produce of All Kinds.....				
Other Personal Property not before men- tioned (if any).....				
AGGREGATE VALUE OF ESTATE.....				

SCHEDULE OF DEBTS (Other than Mortgages or Encumbrances on Real Estate)	PRIN- CIPAL	TOTAL INTEREST	TOTAL
Debts other than Mortgages or Encumbrances on Real Estate.....			
Mortgages and Encumbrances on Real Estate....			
TOTAL OF DEBTS, MORTGAGES AND ENCUMBRANCES.			
NET VALUE OF ESTATE.....			
(Aggregate less Debts, Mortgages and Encumbrances)			

This Inventory "A" referred to in the affidavit of value and relationship of

Sworn to at
on the day of }
19 .

.....
A Commissioner, etc.

INVENTORY "B"

IN THE DISTRICT COURT OF THE DISTRICT OF

"Succession Duty Act."

In the matter of the estate of deceased, late of the of
in the of

NAME OF BENEFICIARY	AGE	RELATION- SHIP	RESI- DENCE	PROPERTY PASSING	VALUE

This is Inventory "B" referred to in the affidavit of value of relationship of

Sworn to at
on the day of }
19 .

.....
A Commissioner, etc.

(WHERE COMPANY IS APPLICANT VARY FORM AS NECESSARY).

CANADA)
PROVINCE OF ALBERTA.)

"Succession Duty Act."

In the matter of the estate of _____, deceased.

Know all Men by these Presents :

That we (name, residence and addition of applicant or applicants) and (name of guaranty company), a guaranty company duly incorporated under the laws of _____ and authorized to carry on business in the Province of Alberta, are jointly and severally held and firmly bound unto the Treasurer of the Province of Alberta, representing His Majesty the King in that behalf, in the penal sum of _____ dollars for which payment well and truly to be made, we bind ourselves, and each of us, for the whole and not for a part, our and each of our heirs, executors, administrators, successors, and assigns, firmly by these presents.

Sealed with our seals, the corporate seal of the guaranty company being duly attested by the proper officers thereof.

Dated this day of , 19 .

The condition of this obligation is such, that if the above named _____, the _____ of all the property of _____, late of _____, of _____, in the _____ of _____, deceased, who died on or about the _____ day of _____ 19____, domiciled at _____ in the _____ of _____, do well and truly pay, or cause to be paid to the Treasurer of the Province of Alberta for the time being, representing His Majesty the King in that behalf, any and all duty to which the property of the said _____, coming into the hands of the said _____, may be found liable under the provisions of *The Succession Duties Act* within six months from the date of the death of the said _____, or within such further time as may be give for payment thereof under the provisions of the said Act, then this obligation shall be void and of no effect, but otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered,)
in the presence of)

AFFIDAVIT OF EXECUTION.

CANADA
PROVINCE OF ALBERTA.

I. _____, of the _____ of _____, in the _____,
_____, make oath and say as follows :

(1) I am the person whose name is subscribed to the annexed bond as the attesting witness to the execution thereof, and the signature set and subscribed thereto, as such attesting witness, is of my proper hand-writing, and my name and addition are correctly above set forth.

(2) I was present and did see the said bond duly signed and executed by _____, therein named.

Sworn before me at _____

Sworn before me at _____
 in the _____ of _____
 this _____ day of _____
 19 ____.

.....
 A Commissioner, etc.

FORM 3.

CANADA }
 PROVINCE OF ALBERTA. }

"Succession Duty Act."

NOTICE OF LIEN.

To the Registrar for

Take notice that Succession Duty is claimed by the Treasurer of the Province of Alberta, representing His Majesty the King in that behalf, in respect of _____ passing on the death of _____, late of the _____ of _____ in the, _____ of _____, deceased, for which a lien exists under the Succession Duties Act and that the registration of any person as owner of or of any instrument effecting the said _____ is forbidden unless such instrument is expressed to be subject to such lien.

Dated this _____ day of _____
 19 ____ at the _____
 of _____ in the Province _____
 of Alberta. }

.....
 (Deputy) Provincial Treasurer.

.....
 Solicitor for Provincial Treasurer.

PROVINCE OF SASKATCHEWAN.

SUCCESSION DUTY ACT.

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SASKATCHEWAN REVISED STATUTES 1909.

CHAPTER 38.

An Act to provide for the Payment of Succession Duties in Certain Cases.

SHORT TITLE.

1. Short Title.—This Act may be cited as "*The Succession Duty Act.*" 1903 (2), c. 5, s. 1.

2. Application.—This Act shall apply to the estates of persons dying after the twenty-first day of November, 1903. 1903 (2), c. 5, s. 2.

3. Interpretation.—In this Act and any regulations passed thereunder unless the context otherwise requires the expression:

1. "Property."—"Property" includes real and personal property of every description and wheresoever situate and every estate or interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives;

2. "Aggregate Value."—"Aggregate value" means the value of the property before any debts or other allowances or exemptions are deducted therefrom and includes property outside of Saskatchewan;

3. "Dutiable Value."—"Dutiable value" means the value of the property after the debts or other allowances or exemptions authorised by this Act are deducted and in determining the dutiable value of the estate of a deceased the value shall be taken as at the date of the death of the deceased and allowance shall be made for reasonable funeral expenses and for debts and incumbrances which shall be deducted from the value of the property but no allowance shall be made:

- (a) For debts incurred by the deceased or incumbrances created by a disposition made by the deceased unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or moneys worth wholly for the deceased's own use and benefit and take effect out of his interest; or
- (b) For any debt in respect whereof there is a right to reimbursement from any other estate or person unless such reimbursement cannot be obtained; or
- (c) More than once for the same debt or incumbrance charged upon different portions of the estate; or
- (d) For the expenses of administration except the expenses of procuring letters probate or letters of administration; or
- (e) For the expenses of the execution of any trust created by the will of a testator. 1903 (2), c. 5, s. 3; 1908, s. 24, ss. 1, 2.

4. To What Act does not Apply.—This Act shall not apply as respects the payment of duty:

1. To any estate the value of which after the allowances authorised by this Act does not exceed five thousand dollars; nor

2. To any estate in respect of property passing by will or intestacy or otherwise to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased or to any person or persons adopted before the age of twelve years by the deceased as his child or children or to any person to whom deceased for not less than ten years prior to his death stood in the acknowledged relation of parent where the aggregate value of the property of the deceased does not exceed twenty-five thousand dollars. 1903 (2), c. 5, s. 4; 1908, c. 24, s. 3.

5. Property in Respect of which Estate Liable to Succession Duty.—Save as aforesaid the estate of any person dying after the twenty-first day of November, 1903, who at the time of his death was domiciled in Saskatchewan or who being domiciled elsewhere died leaving property in Saskatchewan shall be subject to a succession duty to be paid for the use of the province and for the purpose of ascertaining the amount of such duty the classes of property hereinafter enumerated shall be deemed to be part of the estate of the deceased:

(a) **Property in or out of Saskatchewan.**—All property situate within Saskatchewan and any interest therein or income therefrom whether the deceased person owning or being entitled to such property was at the time of his death domiciled in Saskatchewan or elsewhere and where the deceased at the time of his death was domiciled in Saskatchewan all movable or personal property locally situate without Saskatchewan and any interest therein;

(b) **Property Voluntarily Transferred in Contemplation of Death.**—All property situate as aforesaid or any interest therein or income therefrom which shall be voluntarily transferred by transfer made in contemplation of the death of the transferor or intended to take effect in possession or enjoyment after such death to any person in trust or otherwise or by reason of which transfer any person shall become beneficially entitled in possession or expectancy to any property or the income thereof;

(c) **Donations Mortis Causa or Voluntary Dispositions Within Twelve Months of Death.**—Any property taken as *donatio mortis causa* or under a disposition purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise which shall not have been *bona fide* made twelve months before the death of deceased including property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise;

(d) **Property Transferred by Owners to Himself Jointly with some other Person.**—Any property which a person having been absolutely entitled thereto has caused or may cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person including also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone or in concert or by arrangement with any other person;

(e) **Property Passing Under Settlement.**—Any property passing under any past or future settlement including any trust whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting a settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person made by deed or other instrument not taking effect as a will whereby an interest in such property or the proceeds of sale thereof for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property or the proceeds of sale thereof, or to otherwise resettle the same or any part thereof;

(f) **Annuities, etc.**—Any annuity or other interest purchased or provided either by any person alone or in concert or by arrangement with any other person to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased;

(g) **Property of which Deceased was Competent to Dispose Liable to Duty.**—Any property of which a person was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general or limited power as would if he were *sui juris* enable him to dispose of the property as he thinks fit or to dispose of the same for the benefit of his children or some of them, whether the power is exercisable by instrument *inter vivos* or by will or both including the power exercisable by a tenant in tail whether in possession or not but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether the concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose.

(2) **Particular Descriptions not to Affect General Words.**—The descriptions of properties in clauses (c), (d), (e), (f) and (g) shall not be construed to restrict the generality of the descriptions contained in clauses (a) and (b).

(3) **Amount of Duty.**—Where the aggregate value of the property exceeds \$25,000 and any property passes in manner aforesaid either in whole or in part to or for the benefit of the father, mother, husband, wife, child, grandchild, son-in-law, daughter-in-law or adopted child as aforesaid of the deceased the same or so much thereof as passes, as the case may be, shall be subject to a duty at the rate and on the scale as follows:

- (a) Where the aggregate value exceeds \$25,000 but does not exceed \$100,000, one and one-half per cent.;
- (b) Where the aggregate value exceeds \$100,000 but does not exceed \$200,000, two and one-half per cent.;
- (c) Where the aggregate value exceeds \$200,000, five per cent.

(4) Where the aggregate value of the property of the deceased exceeds \$5,000 so much thereof as passes by will, intestacy or otherwise to the grandfather or grandmother or any other lineal

ancestor of the deceased except the father or mother or to any brother or sister of the deceased or to any descendant of a brother or sister of the deceased or to a brother or sister of the father or mother of the deceased or to any descendant of such last mentioned brother or sister shall be subject to a duty of \$5 for every \$100 of the value.

(5) Where the aggregate value of the property of the deceased exceeds \$5,000 so much thereof as passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described or to or for the benefit of any stranger in blood to the deceased save as hereinbefore provided for shall be subject to a duty of \$10 for every \$100 of the value.

(6) No duty shall however be imposed on any estate in respect of any property which, being all of the property passing to one person, when such person is one of the persons enumerated in clause 2 of section 4, does not exceed \$5,000 and in any other case does not exceed \$200.

(7) If any legacy or succession duty has been paid on any movable or personal property locally situate without Saskatchewan elsewhere than in Saskatchewan no further duty in respect of it shall be imposed beyond the amount, if any, for which the estate would be liable in respect of such property in excess of the amount so paid.

(8) Nothing herein contained shall render any estate liable for duty in respect of any property *bona fide* transferred for a consideration that is of a value substantially equivalent to the property transferred. 1903 (2), c. 5, s. 5; 1908, c. 24, s. 6.

6. Executors, etc., to File Inventory and Bonds.—An executor or administrator applying for letters probate or for letters of administration to the estate of a deceased person shall before the issue of letters probate or administration to him make and file with the clerk of the surrogate court in which said application is being made a full, true and correct statement in duplicate, under oath, showing:

(a) A full itemised inventory of all the property of the deceased person including any property not situate in Saskatchewan and the market value thereof; and

(b) The several persons to whom the same will pass under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased; and the executor or administrator shall before the issue of letters probate or letters of administration deliver to the said clerk a bond in a penal sum equal to ten per cent. of the sworn value of the property of the deceased person in respect to which his estate may be liable or may become liable to succession duty executed by himself and two sureties to be approved by the said clerk or a guarantee company to be approved by the attorney general conditioned for the due payment to his Majesty of any duty to which the estate of the deceased coming into the hands of the said executor or administrator may be found liable.

(2) The foregoing subsection shall not apply as respects the provisions requiring security to estates in respect of which no succession duty is payable or administration to which is being applied for by an official administrator.

(3) One duplicate of the said statement shall be forthwith transmitted by the clerk of the said court to the attorney general.

(4) Where property passes on the death of the deceased and no executor or administrator can be made accountable for succession duty in respect of such property every person to whom any property so passes for any beneficial interest in possession and also to the extent of the property actually received or disposed of by him every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the succession duty in respect of such property and shall within two months after the death of the deceased or such later time as the attorney general shall allow deliver to the clerk of the surrogate court of the judicial district in which said property is situate an account to the best of his knowledge and belief of the property which account shall be verified under oath.

(5) Any executor or administrator who in order to escape payment of succession duty imposed by this Act fails to include any property of the deceased in the inventory required by this section to be filed or distributes any part of the said estate without bringing the same into Saskatchewan shall be personally liable to pay to his Majesty the amount of the duty which would have been payable in respect of the property so omitted or so distributed. 1903 (2), c. 5, s. 6; 1908, c. 24, ss. 7, 8, 9, 10, 11.

7. Appraisement of Appraiser.—In case the attorney general is not satisfied with the value so sworn to or to the correctness of the said inventory he may direct in writing some competent person to make a valuation and appraise the said property and also to appraise any property alleged to have been improperly omitted from the said inventory. 1903 (2), c. 5, s. 7; 1908, c. 24, s. 12.

8. Valuation by Appraiser.—Any appraiser appointed under the provisions of the next preceding section shall forthwith give due and sufficient written notice to the executors or administrators and to such other persons as the attorney general may direct of the time and place at which he will appraise the property included in the inventory or any property which in his opinion should be included therein and shall appraise the same accordingly at its fair market value and make a written report in duplicate of the appraisement together with such other facts in relation thereto as the attorney general may by order require and such report shall forthwith be filed in the office of the clerk of the proper surrogate court and for the purpose of the said inquiry and appraisement the said appraiser shall have all the powers which may be conferred upon commissioners under *An Act respecting Inquiries concerning Public Matters*.

(2) The appraiser shall be entitled to receive the sum of \$5 per day for services performed under this Act and his actual and necessary travelling expenses and the same shall be paid to him by the provincial treasurer.

(3) One duplicate of the said report shall be forthwith transmitted by the clerk of the said court to the attorney-general. 1903 (2), c. 5, s. 8; 1908, c. 24, ss. 13, 14.

9. Mode of Assessing Property Liable to Duty.—If the attorney-general and the other parties interested do not agree thereon the provincial auditor shall assess and fix the cash value at the date of the death of the deceased of all estates, interests, annuities and life estates. 1903 (2), c. 5, s. 9; 1908, c. 24, s. 15.

10. Appeal from Appraisement or Assessment.—The attorney-general or any interested person dissatisfied with the appraisement or assessment may appeal therefrom to a judge within thirty days after the making and filing of such assessment and upon such appeal the said judge shall have jurisdiction to determine all questions of valuation and the liability of the appraised estate or any part thereof for such duty and the decision of the said judge shall be final. 1903 (2), c. 5, s. 10; 1908, c. 24, s. 16.

11. Recovery of Duties by Action.—Any sum payable under this Act shall be recoverable with costs of suit as a duty due to His Majesty from any person liable therefor by action in any court of competent jurisdiction in any judicial district and it shall not in any case be necessary to take the proceedings authorized by the preceding sections.

(2) Matters Determinable by Court.—The said court shall have jurisdiction to determine what property is liable to duty under this Act, the amount thereof and the time or times when the same is payable and may itself or through any referee exercise any of the powers which by sections 7 to 10 are conferred upon any officer or person.

(3) Action Before time for Payment of Duty.—An action may be brought to determine any question of liability under this Act notwithstanding that the time for the payment of the duty has not arrived and such action shall be considered as an ordinary action in the said court.

(4) Appeal.—An appeal shall lie to the Supreme Court *en banc* in any such action wherever an appeal would lie if the action were between subject and subject. 1903 (2), c. 5, ss. 11, 12, 13, 14.

12. Declaration as to Liability of Property Transferred Before Death.—Where any person's estate is declared liable to duty in respect of any property which has previous to the death of such person been conveyed or transferred to some other person the court may declare the duty to be a lien upon such property and may make such declaration although the amount of such duty has not been ascertained and where any property in respect of which the estate would have been liable to duty had such property remained in the hands of the person to whom or for whose benefit it was conveyed or transferred by such deceased person has been conveyed or transferred to any purchaser for valuable consideration the court may direct the person to whom or for whose benefit the said property was conveyed or transferred by such deceased person as aforesaid to pay the amount of the duty to which the estate would have been subject in respect of such property. 1903 (2), c. 5, s. 15.

13. Future Estate, etc., When Duty may be Paid.—Where the property real or personal in respect of which duty is payable includes any future or contingent estate, income or interest the duty in respect of such estate, income or interest may be paid within the time limited by subsection (1) of section 14 and where

so paid the duty shall be on the value of such estate, income or interest as at the death of the deceased. By consent of the attorney-general in writing duty may be paid after the time so limited and before such estate, income or interest comes into possession; but in the event of such consent the duty shall then be on a value not less in any event than the value of such estate, income or interest as at the date when the duty is paid; and no deduction shall be made for duty paid or payable in respect of any prior estate, income or interest. The duty in respect of any future or contingent estate, income or interest if not sooner paid shall be payable forthwith when such estate, income or interest comes into possession in which case the duty shall be on the value computed under section 9 as at the date of such coming into possession; and no deduction shall be made for duty paid or payable in respect of any prior estate, income or interest.

(2) Duty Paid Before Estate Comes into Possession.—

Where the duty in respect of any future or contingent estate, income or interest has been paid by the executor, administrator or trustee before such estate, income or interest comes into possession the duty so paid shall be charged on such future or contingent estate, income or interest and shall be repaid with interest at the rate of five per cent. per annum to the executor, administrator or trustee, as the case may be, by the person who is to become entitled to such future or contingent estate, income or interest and if not sooner repaid shall then be repaid at the time when such estate, income or interest comes into possession.

(3) When no Person is Entitled to the Present Enjoyment of a Future or Contingent Estate.—Where in respect of any future or contingent estate or interest there is no person beneficially entitled to the present income or enjoyment or where there is some part thereof to which there is no person so entitled the duty in respect of such future or contingent estate or interest, or part thereof, as the case may be, shall be payable as in section 13 and 14 provided.

(4) Commuting Duties on Future Estate or Interests.—Notwithstanding the duty may under this section not be payable until the time when the right of possession or actual enjoyment accrues any executor, administrator, guardian or trustee, or person owning a prior interest when such executor, administrator, guardian or trustee or person has the custody or control of the property may agree upon or commute for a present payment out of the property in discharge of the said duty; and the attorney-general may upon the application of any such person commute the succession duty which would or might but for the commutation become payable in respect of such interest for a certain sum to be presently paid and for determining that sum shall cause a present value to be set upon such duty regard being had to the contingencies affecting the liability to and rate and amount of such duty and interest and on the receipt of such sum the provincial treasurer on the recommendation of the attorney-general shall give a certificate of discharge from such duty. 1903 (2), c. 5, s. 16; 1908, c. 24, ss. 17, 18.

14. Duties to be Payable Within Eighteen Months from the Death of the Owner.—The duties imposed by this Act unless otherwise herein provided shall be due and payable at the death of the deceased or within eighteen months thereafter and if the same are paid within eighteen months no interest shall be charged or collected thereon but if not so paid interest at the

rate of five per centum per annum from the death of the deceased shall be charged and collected and such duties together with the interest thereon shall be and remain a lien upon the property in respect to which they are payable until the same are paid:

Proviso.—Provided that no duty is payable on the estate or that the duty chargeable upon any legacy given by way of annuity whether for life or otherwise shall be paid by four equal payments the first of which payments of duty shall be made before or on completing payment of the first year's annuity and the three others of such payments of duty shall be made in like manner successively before or on completing the respective payments of the three succeeding years' annuity respectively. In case the annuitant dies before the expiration of the said four years only payment of instalments which fall due before his death shall be required;

Extension of Time for Payment.—Provided further that the Lieutenant-Governor-in-Council upon its being proved to his satisfaction that payment of the duty within the time limited by this subsection would be unduly onerous on the estate may by order so extend the time for the payment of the said duty as shall appear just and reasonable; and the duty shall be due and payable as in the said order set forth.

(2) Certificate of Discharge to be Given by Provincial Treasurer.—The provincial treasurer on being satisfied that no duty is payable on the estate or that the full amount of succession duty has been or will be paid in respect of an estate or any part thereof shall if required by the person accounting for the duty give a certificate to that effect which shall discharge from any further claim for succession duty the property shown by the certificate to form the estate or such part thereof, as the case may be.

(3) Certificate not a Discharge in Case of Fraud, etc.—Such certificate shall not discharge any person or property other than a *bona fide* purchaser for valuable consideration without notice from succession duty in case of fraud or failure to disclose material facts and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for:

Provided the said treasurer may in his discretion decline to grant such certificate until the expiration of one year from the death of the deceased testator or intestate, as the case may be, 1903 (2), c. 5, s. 17; 1908, c. 24, s. 19.

15. Extension of Time for Payment of Duty.—Upon the application of any person liable for the payment of any duty under this Act on notice to the attorney general the judge of the proper surrogate court may make an order extending the time fixed by law for payment thereof where it appears to such judge that payment within the time prescribed by this Act is impossible owing to some cause over which the person liable has no control. 1903 (2), c. 5, s. 18; 1908, c. 24, s. 20.

16. Administrators, etc., to Deduct Duty Before Delivering Property.—Any administrator, executor or trustee having in

charge or trust any estate, legacy or property in respect of which duty is payable under this Act shall deduct the duty therefrom or collect the duty thereon upon the appraised value thereof from the person entitled to such property and he shall not deliver any property subject to duty to any person until he has collected the duty thereon. 1903 (2), c. 5, s. 19.

17. Power to Sell for Payment of Duty.—Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay the duty in the same manner as they may by law do for the payment of debts of the testator or intestate. 1903 (2), c. 5, s. 20.

18. Duty to be Paid to Provincial Treasurer.—Every sum of money retained by an executor, administrator or trustee or paid into his hands for the duty on any property shall be paid by him forthwith to the provincial treasurer or as he may direct. 1903 (2), c. 5, s. 21.

19. Refunding Duty upon Subsequent Payment of Debts.—Where any debts shall be proved against the estate of a deceased person after the payment of legacies or distribution of property from which the duty has been deducted or upon which it has been paid and a refund is made by the legatee, devisee, heir or next of kin a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee if the said duty has not been paid to the provincial treasurer or by the provincial treasurer if it has been so paid. 1903 (2), c. 5, s. 22; 1908, c. 24, s. 21.

20. Foreign Executors, etc., not to Transfer Stock, etc., Until Duty Paid.—No foreign executor or administrator shall assign or transfer any stock or shares in Saskatchewan standing in the name of the deceased person or in trust for him which are liable to pay succession duty until such duty is paid as herein provided or security given as required by section 6 of this Act and any corporation allowing a transfer of any stocks or shares contrary to this section shall be liable to pay the duty payable in respect thereof. 1903 (2), c. 5, s. 23; 1908, c. 24, s. 23.

21. Mode of Enforcing Payment of Duty.—If it is made to appear on affidavit to a judge that any duty accruing under this Act has not been paid according to law he may make an order by way of originating summons directing the persons interested in the property liable to the duty to appear before the court on a day certain to be therein named and show cause why said duty shall not be paid.

(2) The service of such order and the time, manner and proof thereof and fees therefor and the hearing and determining thereon and the enforcement of the judgment of the court thereon shall be according to the practice in or upon the enforcement of a judgment of the supreme court. 1903 (2), c. 5, s. 24.

22. Costs.—The costs of all proceedings under this Act in any court shall be in the discretion of the court or of a judge thereof. 1903 (2), c. 5, s. 25.

23. Limitations of Actions.—Any action, matter or proceeding by or against the province in respect of duties or claims

arising upon or out of any succession shall be commenced within six years from the time when such duties or claims became payable. 1903 (2), c. 5, s. 26.

24. Fees of Clerks of Court.—The officials of the courts shall be entitled to take for the performance of duties and services under this Act fees similar to those payable to them under the rules of the court in which the proceedings are taken. 1903 (2), c. 5, s. 27; 1908, c. 24, s. 23.

25. Lieutenant Governor to make Regulations.—The Lieutenant-Governor-in-Council may make regulations for carrying into effect the provisions of this Act and to cover cases not herein provided for which shall be published forthwith in *The Saskatchewan Gazette*. 1903 (2), c. 5, s. 28,



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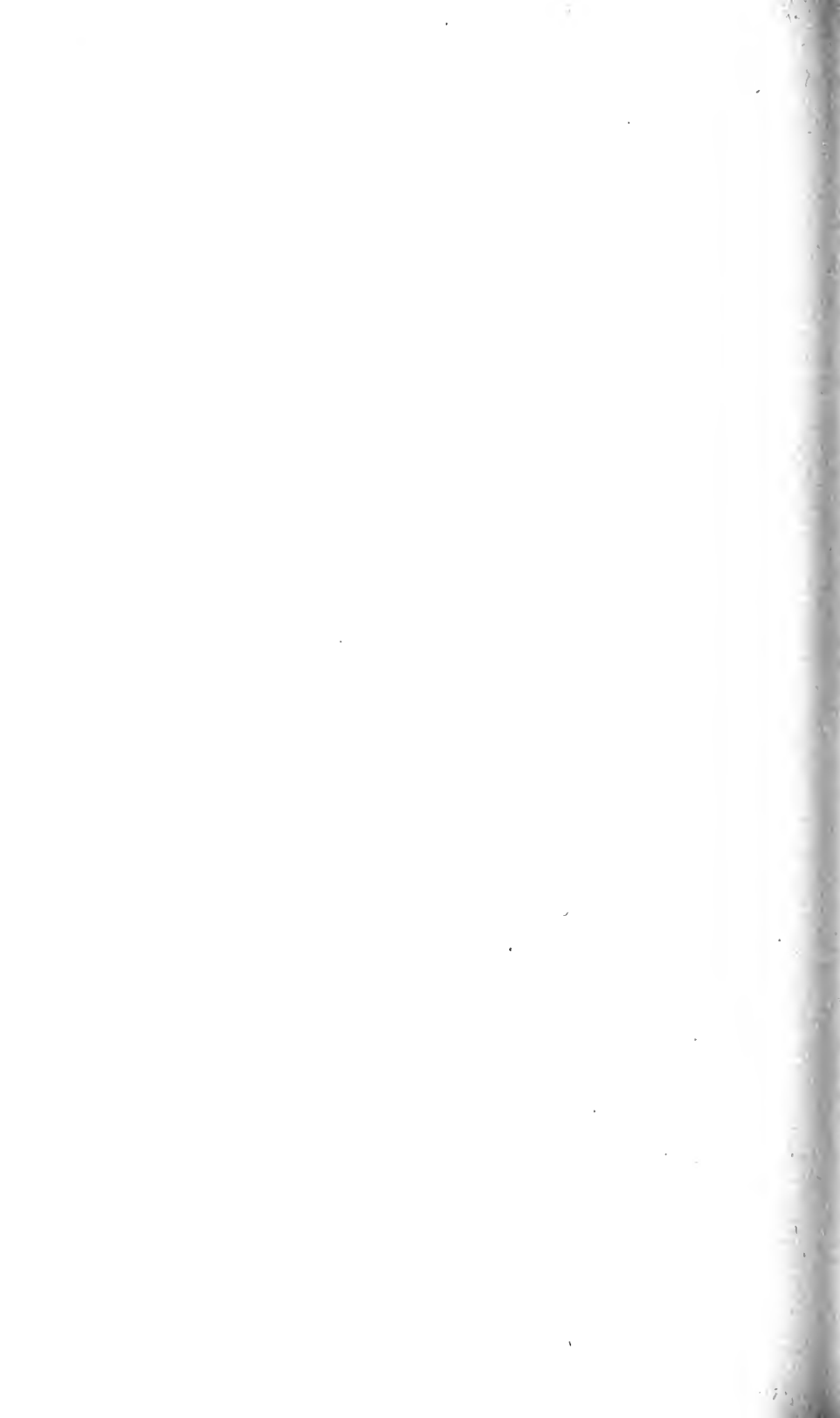
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**EMPLOYERS' LIABILITY AND
WORKMEN'S COMPENSATION
ACTS**



QUEBEC

WORKMEN'S COMPENSATION ACT.

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FOREWORD.

The following notes include all of the reported decisions dealing with the Compensation Act, to the end of February, 1917. They include also a good many notes of unreported considered decisions and of formal judgments rendered upon compromises agreed upon between claimants and employers. The latter I have inserted, because, while of no assistance by way of citation before a court, they are nevertheless some guide to claims' agents and adjusters in particular, and not without interest to the members of my profession.—WALTER S. JOHNSON.

PROVINCE OF QUEBEC.

9 EDWARD VII.

CHAPTER 66.

An Act respecting the responsibility for accidents suffered by workmen in the course of their work, and the compensation for injuries resulting therefrom.

(Sanctioned May 29th, 1909).

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

SECTION I.

Compensation.

1. Accidents happening by reason of or in the course of their work, to workmen, apprentices and employees engaged in the work of building; or in factories, manufactories or workshops; or in stone, wood or coal yards; or in transportation business by land or by water or in loading or unloading; or in any gas or electric business; or in any business having for its object the building, repairing, or maintenance of railways or tramways, waterworks, drains, sewers, dams, wharves, elevators, or bridges; or in mines, or quarries; or in any industrial enterprise, in which explosives are manufactured or prepared, or in which machinery is used, moved by power other than that of men or of animals, shall entitle the person injured or his representatives to compensation ascertained in accordance with the following provisions.

This Act shall not apply to agricultural industries nor to navigation by means of sails.

Dallaire vs. Que. Salvage Co. (1916), 49 S. C. 501. Dorion, J.

Une goélette qui, munie de voiles, est habituellement transportée d'un lieu à un autre par un remorquer, et ne fait jamais usage de ses voiles, ne participe pas de la navigation à voile.

Un marin qui se noie, en tombant de son navire, non pas au cours de la manœuvre, mais alors qu'il y prend sa pension facultativement aux termes de son engagement, est néanmoins victime d'un accident à l'occasion de son travail.

Babashock vs. Beirman (1915), 22 R. L., n. s. 443. Guerin, J.

A workman who tries to work an unfamiliar machine without authorization, and against the will of his employer is not entitled to any compensation under this Act.

Boisseau vs. City of Montreal (1916), 50 S. C. 524. Allard, J.

Un journalier employé par la cité de Montréal à creuser des tranchées pour canaux d'égout dans les rues, et qui se gèle les deux

pieds pendant son travail, a droit de se prévaloir des dispositions de la loi des accidents.

La loi des accidents s'applique aux corporations municipales.

Trudeau vs. City of Montreal (1915), 49 S. C. 62. MacLennan, J.

Un employé de la cité de Montréal, travaillant à l'entretien des rues publiques, ne tombe pas, en cas d'accident, sous l'empire de la loi des accidents; et sa demande en justice peut être rejetée sur inscription en droit.

Kennedy vs. Thom (1916), 49 S. C. 211. Lemieux, C. J.

L'affrètement d'un bateau à vapeur au gouvernement, par charte-partie ordinaire, pour servir au transport des militaires et à la patrouille d'un port, n'affecte pas la nature de l'entreprise du propriétaire, qui à titre d'entreprise de transport par eau, demeure assujettie aux dispositions de la loi des accidents du travail.

Le chef d'entreprise, qui met son ouvrier à la disposition d'un tiers, tout en continuant de lui servir son salaire, ne cesse pas d'être responsable des indemnités aux quels l'ouvrier peut avoir droit à la suite d'un accident du travail, survenu dans ces conditions.

Page vs. Town of Joliette (1916), 49 S. C. 437, Review.

Un ouvrier qui est employé par une corporation municipale à la construction d'un aqueduc, et qui est victime d'un accident, peut invoquer les dispositions de la loi concernant les accidents du travail.

The Canada Cement Co. vs. Pazuk (1913), 22 K. B. 432.

La perte d'un pied par un ouvrier qui a dû le faire amputer à la suite de congélation survenue pendant qu'il vaquait à son travail par un froid excessif, est un accident du travail qui donne ouverture aux recours des art. 7321 et seq., S. R. Q. 1909. (See also, *Nikkicuk vs. McArthur* (1916), 34 W. L. R. 674).

Paquette vs. Town of Sault au Recollet, Gazette, March 4, 1914.

The right of a civic workman to take suit under the Workmen's Compensation Act against the municipality-employer, was again upheld before the Practice Court yesterday when the petition of Louis Paquette asking for authorization to sue the town of Sault au Recollet was granted. Paquette was injured in the course of road-making operations, and argued that the town in carrying out such work was taking upon itself the functions of a road-building contractor, and hence was amenable to prosecution under the Act.

Caille vs. City of Montreal, 14 P. R. 82, Guerin, J.

A petition to sue under the Act will be dismissed if it only alleges that the accident occurred while the deceased was employed by the City of Montreal in the making or repairing the roadway, directing a machine which serves to mix concrete, said machine being propelled by mechanical force other than hand or horse power.

Caille vs. City of Montreal, 15 O. P. R. 174 (Review).

Reversing Guerin, J. Held:—"En vertu de l'art. 7347 des Statuts Refondus de Québec, le juge de la Cour Supérieure n'étant chargé que de concilier les parties, ne peut, quelque soit la cause de la non-conciliation, que constater l'accord ou le désaccord des parties, sans le juger, et les renvoyer devant le tribunal, seul compétent pour apprécier le bien ou le mal fondé de la demande, comme des exceptions qu'elle soulève."

Provost vs. The St. Gabriel Lumber Co., 12 P. R. 285, Dugas, J. See also, 11 O. P. R. 417.

Les Exploitations Forestières do not come within the Act.

Norico vs. E. B. Eddy Co., 12 P. R. 310, Weir, J.

A petition to sue under the Act will be dismissed if it refers to an accident in lumber *chantiers*.

Duquette vs. La Cie. de Pulpe de Megantic, 12 P. R., p. 359. Globensky, J.

An accident to a woodman or woodcutter (*bucheron*) in the forest does not give his representatives any right to claim under this Act.

Laverdure vs. The Gres Falls Co., 18 R. L. (N. S.) 69, Tourigny, J.

L'accident dont est victime celui qui est employé par le propriétaire des scieries, mais dont l'occupation consiste à transporter du bois manufacturé au moyen d'une voiture, de la cour à bois à un quai, alors qu'il était employé à faire ce charroriage, ne tombe pas sous l'application de la loi concernant les accidents de travail.

Dorion vs. The Phoenix Bridge & Iron Works, 13 P. R., p. 127. Charbonneau, J.

The Act does not apply to a workman who complains of having contracted a disease in the course of the construction of a bridge, he being obliged to work standing in the water. The petition was dismissed after argument.

Lepine vs. City Ice Co., Gazette, January 20, 1917.

Illness must not be confounded with accident, said Mr. Justice Greenshields yesterday in dismissing a widow's claim against the City Ice Company for \$2,025 damages under the Workmen's Compensation Act for the death of her husband, Delphis Lepine.

Lepine was engaged by the company as an ice-cutter, working on the river, up to January 24, 1916. His salary was \$12 a week. On the date named he left his work, and, on reaching home, complained of illness.

"The proof establishes," said the judge, "that a doctor was called in on February 15 and he pronounced the patient suffering from inflammation of the kidneys and lumbago. Lepine died on September 13 last from lumbago and tuberculosis. There is no legal proof that Lepine met with an accident in the course of his work or that the disease from which he died was due in any way to the work which he performed for the company defendant. For these reasons the plaintiff's action is dismissed, with costs."

Jette vs. G. T. R., 40 S. C. 204. Pouliot, J.

Un serre-frein qui, malgré la défense d'un officier supérieur saute d'un convoi et se donne la mort, n'est pas la victime d'un accident survenu par le fait ou l'occasion de son travail. Au surplus sa faute est inexcusable au point de vue de faire déclarer l'accident intentionnellement provoqué par lui.

Greig vs. G. T. R., 22 R. de J. 512. (Review).

Le travail de l'employé commence dès qu'il est à la disposition du patron, et finit lorsque l'employé a laissé le lieu de son travail et repris sa complète liberté d'action.

Lapierre vs. Frenette (1915), 22 R. L. n. s. 39.

Carriage of goods at so much a load, and without any supervision or control by the owner of the goods, removes the case from without the Workmen's Compensation Act.

Bernier vs. City of Montreal, 13 P. R., p. 94. Charbonneau, J.

The purpose of the Compensation Act is to place upon capital the burden of an accident happening in the course of the exploiting of capital in any enterprise to an employee who assists in such exploitation and receives his returns in the form of wages. Even though such accident is due to a *cas fortuit* or to *force majeure*.

The construction or maintenance of an aqueduct by a municipal corporation is an enterprise undertaken for gain. If the corporation does the work itself, it becomes *chef d'entreprise* and is subject to the Act.

Clayton vs. Montreal Light, Heat & Power Co., 13 P. R., p. 100. Charbonneau, J.

An electric light company which erects a building as part of its general system and plant and incidental thereto, as its own contractor, becomes subject to the Workmen's Compensation Act.

Ledoux vs. Lucas dit Laplante, 43 S. C., p. 427. Martineau, J.

When a workman is set to a particular task, an order given him by his employer not to work at it for a given time and to go to another task, is not an absolute defense depriving him of his recourse, or even an inexcusable fault which can be opposed to him in case of accident.

Hence, when an employer tells a workman who is working at a sawing machine to leave it and work at a planing machine for the afternoon, if the workman continues his usual work and is injured, he is entitled to indemnity.

Coderre vs. City of Sherbrooke, 43 S. C., p. 201. (Review Tellier, DeLorimier and Greenshields, JJ.).

It is essential, in order that an accident shall be said to have arisen "in the course of their work" (*surrenu a l'occasion du travail*), that it be caused by some act in connection with the work—*par un acte connexe au travail*. Hence, a workman employed in a workshop in which machines are operated by electricity, who, being told on his arrival in the morning that the power was off, out of curiosity goes to the power house and entering puts his hand on a wire and is killed by an electric shock, leaves his widow without recourse against his employer.

The Dominion Quarry Co. & Morin, 21 K. B., p. 147.

When an accident happens during and at the place of employment, it is not necessary, in order to hold the employer liable, to show that the accident was *en correlation étroite* with the work assigned to the workman who is the victim; it is enough that the work was the occasion of the accident. Hence, the workman who is engaged for special work near the mouth of a quarry, and who is killed by the fall of a crane, at another spot 20 feet away and 30 feet lower down, his presence there being unexplained, is victim of an accident which entitles his heirs to recourse under the Act.

Broulieu vs. Picard, 42 S. C., p. 455 (Review, Tellier, DeLorimier and Greenshields, JJ.).

A laborer hired to do work for a price per quantity performed, *e. g.*, to drill a rock at twenty cents per cubic foot, under the direction of his employer, is not a contractor, but an ordinary workman, and is entitled, in case of accident, to the benefits of the Workmen's Compensation Act.

Boutin vs. Corona Rubber Co., 41 S. C., p. 519. Laurendeau, J.

The damages caused a minor of fourteen years by the act of an employer, the minor being employed in contravention of article 3833 R. S. Q., 1909, are recoverable by action under C. C. 1053. An exception to the form will not lie on the ground that the only recourse is under the Workmen's Compensation Act. The recourse under this Act arises out of the obligations which the law attaches to the contract of lease and hire of services between employer and workman—a contract which was not entered into between this minor and the defendant.

Durocher vs. Kinsella, 40 S. C. 459 (Review).

A workman who sues to recover compensation for an accident by reason, or in the course of his work, must clearly prove the nature of the accident, and that it did occur in the course of his employment. Hence, if he gives different accounts of it, at different times, or if his conduct in relation to it makes it doubtful how or when it occurred, his suit will be dismissed.

Tessier vs. La Prevoyance (1916), 49 S. C. 385. In Review, confirming Lafontaine, J.

Dans le cas où un ouvrier est appelé, pendant son travail, à faire un violent effort musculaire à la suite duquel il perçoit immédiatement une commotion dans son œil gauche, perd ensuite graduellement l'usage de cet œil et constate d'après l'avis des médecins oculistes, qu'il il a eu décollement de la rétine de l'œil, l'on peut maintenir qu'il y a eu accident et blessure qui engage la responsabilité d'une compagnie d'assurance en vertu d'une police contre les accidents.

Patenaude vs. Morgan Co., Ltd., 17 R. de J. 508. Tellier, J.

Seuls les accidents survenus par le fait ou à l'occasion du travail aux ouvriers, apprentis ou employés dans les industries que vise la loi de 1909, donnent au termes de cette loi, droit, au profit de celui qui en a été victime ou à ses représentants, à une indemnité à la charge du chef de l'entreprise; qu'il suit de là que l'ouvrier, l'apprenti, l'employé ou ses représentants, demandeurs en indemnités, doivent prouver tout à la fois; outre leur qualité et l'assujettissement à la dite loi, de l'industrie dans laquelle s'effectuait le travail; que la dite loi n'apporte, en effet aucune dérogation au principe posé par C. C. 1203, qui veut que celui qui réclame l'exécution d'une obligation, doit la prouver.

Que la charge de la preuve du caractère accidentel de l'incapacité et de la nature de cette incapacité incombe au demandeur.

Rosenbloom vs. Lavut et al. (1916), Review, 50 S. C. 48.

Les "entreprises de transports" mentionnées dans la loi des accidents du travail, ne comprennent pas celles qui sont faites par un commerçant pour son compte dans l'exploitation de son commerce; elles ne s'étendent qu'aux transports d'objets quelconques pour le compte d'autrui.

Il en est ainsi des "entreprises de chargement ou de déchargement."

Il en serait autrement, si le patron était un industriel ou une autre personne soumise à cette loi.

Ainsi un cocher-livreur qui est employé à la livraison des marchandises pour un importateur, ne peut invoquer les dispositions de cette loi, s'il est écrasé par un automobile au moment où il est à décharger les marchandises de sa voiture.

Farley vs. Canadian Charcoal Co., Ltd., Gazette, February 5, 1917.

Is a charcoal merchant whose industry is carried on at St. Gabriel de Brandon liable under the Workmen's Compensation Act to an employee when the latter meets with an accident while at work in relation to the merchant's business of distributing the charcoal in Montreal, which is seventy-six miles from the place of manufacture?

In reply to this question of law, Justice Weir, in the Superior Court, and Justices Martineau, Greenshields and McDougall, in the Court of Review, have given a negative reply in the light of proof in the case of Wilfrid Farley, who sought to recover \$2,719 damages from his employers, the Canadian Charcoal Company, Limited, under the aforesaid Act. Plaintiff worked as a carter for the company, making delivery of charcoal to defendants' customers in Montreal. While looking after the care of one of the company's horses he

was struck in the eye by the swish of the tail of the animal and in consequence practically lost the sight of his right eye.

Justice Weir dismissed plaintiff's action on the ground that defendant's establishment in Montreal was merely a store, that plaintiff was not engaged in any of the enterprises mentioned in the Workmen's Compensation Act, and, therefore, was not entitled to seek compensation under that statute.

The Court of Review on Saturday confirmed this judgment and dismissed plaintiff's appeal with costs.

"It would be somewhat difficult to decide under the proof as made," remarked Justice Greenshields, "that the business carried on by the company defendant is an industry to which the Workmen's Compensation Act can be applied. But assuming for the purpose of argument that it is, the complete operation of transforming the wood into charcoal is completed, and all the work connected with the transformation is completely done at St. Gabriel de Brandon, whereas the plaintiff is employed, not in any manufacturing industry, but simply to make delivery of orders taken at the store in Montreal. Under the circumstances, it cannot be held that plaintiff is entitled to the relief provided for under the Workmen's Compensation Act. I cannot agree that the selling and delivery of the charcoal in Montreal is an accessory or a necessary part of the work at St. Gabriel."

In reply to the other point raised by plaintiff—that, because defendant operated a coal yard in Montreal and plaintiff was employed on by the company defendant is an industry to which the Workmen's Compensation Act can be applied. But assuming for the purpose of argument that it is, the complete operation of transforming the wood into charcoal is completed, and all the work connected with the transformation is completely done at St. Gabriel de Brandon, whereas the plaintiff is employed, not in any manufacturing industry, but simply to make delivery of orders taken at the store in Montreal. Under the circumstances, it cannot be held that plaintiff is entitled to the relief provided for under the Workmen's Compensation Act. I cannot agree that the selling and delivery of the charcoal in Montreal is an accessory or a necessary part of the work at St. Gabriel."

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In the absence of this proof I cannot and will not characterize the place as a coal yard. I take the words 'coal yard' to mean a yard where a large quantity of coal imported or brought is stored. To give application to the Act under the proof as made, I am satisfied, would be an unwarrantable extension of the application of the Act and I should confirm the judgment."

Judgment of Justice Weir was confirmed accordingly.

Chamberland vs. Chamberland (1916), 50 S. C. 285. Review.

L'employé d'un hôtelier qui travaille tantôt comme commis de bar et tantôt comme fabricant d'eaux gazeuses que son patron vend dans son hôtel, a droit au bénéfice de la loi des accidents du travail, si, pendant qu'il est occupé à la manufacture de ces eaux gazeuses, il est victime d'un accident, quelle que soit la quantité de ces eaux que cet hôtelier fabrique.

Thorne vs. Roy, 41 S. C., p. 305, Lemieux, A. J. C.

The indemnity is due for damages caused by a pure accident without any element of fault needing to be found.

Thorne vs. Roy, 41 S. C., p. 305. Lemieux, A. J. C.

A butcher establishment in which animals were killed and made ready for the meat market, is a workshop or "atelier" within the meaning of the Act, and workmen employed in such a place come under the Act.

Croteau vs. The Victoriaville Furniture Co., 40 S. C., p. 44. Pouliot, J.

When repairs are made to a factory by the workmen employed in it at their trade of making furniture, an accident happening to one of them is "in the course of his work," and gives rise to claim under the Act.

Vigneault vs. Brouillard, 40 S. C., p. 27. Pouliot, J.

A wood merchant, who is also owner of a sawmill, and who

transports the wood after it is cut in the forest to his mill, by means of his own conveyances and horses and by men employed by him, is not engaged in a transportation business as mentioned in article 7321, R. S. Q. 1909.

The transport of logs to a sawmill which is not in operation, although the logs will later be cut there, is not a "*travail*," or "*work*" of this sawmill industry, in the sense of the article cited.

The cutting of wood, or the farming out of the right to cut wood, on public lands, is not an industrial operation, but is an agricultural industry covered by the exception to the rule of the article.

Hence, an employe of a person to whom has been farmed out the right to cut wood and who owns a sawmill, who suffers an accident in the course of the transport of logs from the forest to the mill which is not in operation, has no recourse under the section.

Menard vs. Quinlan, 47 S. C. 115, Review.

Un ouvrier qui, sa journée de travail terminée, embarque dans une chaloupe n'appartenant pas à son patron et n'étant pas sous son contrôle, pour revenir à son domicile, et qui se noie en route, n'est pas la victime d'un accident tombant sous la loi des accidents du travail; et sa veuve et ses enfants sont sans réclamation contre le patron.

Gagnon vs. Demers, 20 R. L., n. s. 451. Archer, J.

Qu'un peintre qui s'engage à un propriétaire pour lui peindre ses bâtiments à raison de trente-cinq centins par heure, n'établit pas entre lui et ce propriétaire des relations de patron et d'ouvrier, et que partant la "*Loi des accidents du travail*" ne s'applique pas.

Pencis vs. Girard, et al., 47 S. C. 406. Bruneau, J.

Dans les actions en vertu de la loi des accidents du travail c'est au demandeur qu'incombe la preuve de l'application de la loi.

Cette loi n'est pas applicable, lorsque l'ouvrier souffre non pas à cause d'un accident, mais à la suite d'une maladie, eut-elle été contracté à l'occasion de son travail chez son patron, comme les maladies professionnelles.

C. P. R. vs. Flore, 24 K. B. 55.

Lorsqu'un ouvrier étant à son travail reçoit une parcelle de charbon dans l'œil, et que ses compagnons de travail, en cherchant à lui enlever, lui communique une maladie dont il résulte, pour lui éecité, l'accident a lieu à l'occasion de son travail, et il a droit à une indemnité.

Langlois vs. Bonhomme, Guerin, J. Gazette, April 10, 1914.

"A Workmen's Compensation Act somewhat out of the beaten track, was dealt with by Mr. Justice Guerin yesterday when His Lordship ordered Francis Bonhomme, master plumber, to pay an indemnity and provisional pension to Arthur Langlois. Bonhomme had the plumbing contract for a house on St. Martin street and Langlois, a journeyman, was sent to do the job. On arriving one morning he met one of the painters working in the house, who was trying to get access to the cellar by way of a trap door. Langlois offered to help him open the trap and this he did by means of an implement which he had in his tool kit. Passing the spot a few hours later, Langlois forgot about the open trap door with the result that he was projected into the cellar and sustained internal injuries of such gravity that he will be totally incapacitated from work for at least a period of one year.

The defendant repudiated the suit on the grounds that Langlois, in opening the trap, was not doing the work for which he had been engaged. In fact he was not working for defendant at all in doing

this. Moreover, if he had subsequently fallen into the cellar, it was due directly and solely to his own act in opening the trap—a thing he had no business to do. Hence, argued defendant, the accident was not one which had arisen in the course of or as a result of his daily work.

Mr. Justice Guerin held to the contrary view, and ruled that the accident had not been intentionally brought on by the plaintiff and was not a result of inexcusable negligence. Making the computation of the indemnity to which plaintiff had a right, under the Compensation Act. His Lordship awarded him a lump sum as well as a weekly indemnity up to and including July 31 next; reserving to the parties any rights which they may possess subsequent to that date, as there is doubt as to whether the plaintiff will live till that date."

Tremblay vs. Baie St. Paul Lumber Co., 46 S. C. 203; Review, 21 R. de J. 102.

Il n'y a pas de faute inexcusable de la part de la victime dans les circonstances suivantes:—L., flotteur de bois, revenant au camp après sa journée de travail, par une nuit noire et pluvieuse, arriva près d'une rivière de trente-cinq pieds de large ou le pont avait été dans la journée emporté par les eaux. Dans le même temps des chercheurs envoyés du camp pour le retrouver l'ayant aperçu jêtèrent sur la rivière un arbre pour en former un pont, comme c'est l'habitude dans ces circonstances. L. tenta de traverser, mais l'arbre cassa, et il fut entraîné par le courant et se noya.

L'accident ci-dessus, bien qu'ayant eu lieu après la journée de travail, est arrivé sur le lieu du travail, par le fait et à l'occasion du travail, puisque le flotteur retournait au camp commun, par nécessité, pour y prendre sa nourriture et son repos sous la surveillance de son patron.

La compagnie qui coupe le bois, en fait le flottage jusqu'à sa scierie ou il est transformé en bois de commerce, n'exerce pas une industrie agricole, mais fait une opération commerciale et manufacturière, et le "flotteur" de son bois tombe sous les dispositions de la loi des accidents du travail. (Confirmed in appeal, 25 K. B., p. 1).

Caron vs. Windsor Hotel Co., Ltd., 46 S. C. 529, Review.

Un employé dans une buanderie mue par l'électricité et tenu par un hôtel public a droit au bénéfice de cette loi.

Lorsque dans un établissement industriel, un ouvrier est à réparer une machine après les heures ordinaires d'ouvrage, et que le contre-maitre demeurant sur les lieux croyant la réparation terminée, essaie de faire fonctionner la machine et est blessé, l'accident arrive à l'occasion du travail.

Bean vs. Asbestos Corp. of Can., 21 R. L., n. s. 380. Pouliot, J.

Toute preuve par oui-dire est, en principe, interdite, mais, par exception, elle peut être reçue comme preuve directe ou comme accessoire, lorsqu'elle est spontanée et contemporaine au fait duquel elle découle, comme les déclarations qu'un blessé, qui meure à la suite de ses blessures, fait, au moment de l'accident, sur la cause de ses lésions internes.

Dame Desilets vs. Laplante, 48 S. C. 385. Pouliot, J.

L'ouvrier travaillant pour le compte d'un entrepreneur au transport d'une batisse et qui perd la vie à la suite d'un accident, tombe sous l'application de la loi des accidents du travail, ce transport se rapportant à l'industrie du bâtiment.

Michaud vs. Tremblay et al., 48 S. C. 289. Pouliot, J.

L'abattage du bois dans les forêts ne constitue pas une opération industrielle à laquelle s'applique la loi des accidents du travail.

Lavery vs. G. T. R., 48 S. C. 278 (Review), 22 R. de J. 17.

If an employee leaves his work without permission from his employer, and without his knowledge, and goes to a place where he is told not to go, and meets with an accident, he has no claim under this Act, as the accident did not happen by reason of or in the course of his work.

Pelletier vs. Lachance, R. J. O. 47, S. C. 526. Belleau, J.

La responsabilité du patron en vertu de la loi des accidents du travail, s'étend non seulement à l'accident, mais à tout ce qui s'y rattache et qui peut en être considéré comme une suite immédiate.

Ainsi l'aggravation produite par une chute que ferait l'ouvrier lorsqu'on le transporte chez lui, ou par l'erreur du médecin ou du chirurgien appelé à lui donner des soins ou par l'une des éventualités inhérentes à toute maladie et toute blessure, doit être considérée comme une suite de l'accident et engage la responsabilité du patron. [*Reversed in Review*, 49 S. C. 122].

Labbe vs. La Compagnie Julien. Limitee, 48 S. C. 322, Review.

Un marchand qui tient un atelier uniquement pour la réparation des marchandises (dans l'espèce des meubles) qu'il reçoit endommagés du manufacturier, n'est pas un industriel assujetté à la loi des accidents du travail.

Les opérations de chargement et de déchargement ne tombent sous le coup de la loi des accidents de travail qu'en autant qu'elles sont exécutées comme entreprise par des personnes qui en font métier.

Le chargement par un marchand des denrées qui font l'objet de son commerce, pour les expédier à ses clients, ne constitue pas une entreprise de chargement.

Bergeron vs. G. T. R. (1915), 22 R. L. n. s. 58.

Proof of the accident, in a suit under this Act, may be made by the plaintiff alone as in ordinary cases based upon the common law.

Mitchell Esqual. vs. Henderson, 43 S. C. 516 (Review).

An employer cannot set up as against a minor of fifteen years, suing for compensation, that his employment at all was illegal under 3833, S. R. O., and deprived him of any recourse.

Gagnon vs. Demers, 15 O. P. R. 100. Charbonneau, J.

Quoiqu'il y ait de forts doutes de savoir si un peintre qui a fait une chute en travaillant à une maison à raison de tant de l'heure puisse pour suivre en vertu de la loi des accidents du travail, la cour ne renverra pas à limine sa requête pour poursuivre.

Germain vs. La Ville de Maisonneuve, 15 O. P. R. 145. Beaudin, J.

Il sera permis à une personne qui est à l'emploi d'une municipalité en qualité de pompier, de constable ou d'ouvrier de poursuivre en vertu de la loi des accidents du travail, s'il lui arrive un accident en se rendant à un incendie.

Frechette vs. C. P. R., 45 S. C. 209, Review.

As to procedure in opposing jurisdiction under the Act.

Foucher vs. Morache, 46 S. C. 498, Review.

Un ouvrier que son patron place à la tête de ses compagnons pour le représenter, comme surveillant ou contremaître, et auquel il a donné en son absence, la direction de ses travaux, mais qui travaille lui-même avec les autres ouvriers, ne perd pas sa qualité d'ouvrier vis-à-vis son patron, et conserve le bénéfice de l'application de la loi des accidents du travail.

Cooney vs. Morel, 45 S. C. 458, Review.

Many of the cases provided in this section, an action will not be maintained unless a contract of services, express or implied, be alleged and shewn to have existed at the time of the accident.

Bean vs. Asbestos Corp. of Can., 21 R. L., n. s. 378.

Death caused by muscular exertion comes within the purview of the Act.

Trudeau vs. City of Montreal (1915), 17 O. P. R. 216, 49 S. C. 62.

A workman engaged in the repair and maintenance of the streets and roads of Montreal is not protected by the provisions of this Act, and his action will be dismissed on inscription in law.

Larouche vs. Jobidon (1915), 49 S. C. 10.

The Act applies to cases covering the digging of wells.

Lortie vs. Gross et al. Archer, J. (Reported in Gazette, February 18, 1914).

"A case of a workman who had, to all appearances, a good basis of claim for damages on account of injury sustained in the course of his work, but who knocked at the wrong door, as it were, in attempting to collect, has been dealt with by Mr. Justice Archer, the proceedings embodying information of interest to storekeepers, merchants and others who may, from time to time, be called upon to engage outside help in order to effect repairs to their premises or fixtures. Albert Lortie sued B. Gross and M. Dembrofsky for a stated sum as well as a life pension, because whilst engaged in repairing a refrigerator in defendant's butcher shop, he fell from a ladder and sustained such injuries that he was under medical care for several weeks. His earning capacity, as a carpenter, he also alleged, had been permanently, though partially, decreased. Mr. Justice Archer, after reviewing the evidence, found that Lortie's case was not one falling within the purview of the Compensation Act, as the responsibility of the defendants in the specific circumstances adduced was not laid down in the Act.

"It was shown that Gross and Dombrofsky had commissioned a carpenter named Legault to do the repair work and had subsequently authorized Legault to engage a fellow carpenter to help him do the job. They agreed to pay this additional carpenter the current rate of wage. Mr. Justice Archer in dismissing the suit, cited article 7321 of the Statutes as follows, and held that the case of plaintiff was not one falling under the Act."

Larocque vs. James Maclaren Co., Ltd. Gazette, December 1, 1917. Review.

"Is a wood-cutter working in timber shanties engaged in occupation as a forester, or is he a workman engaged in industrial pursuit that—in the event of sustained injuries by accident—would bring his employer within the liabilities of the Workmen's Compensation Act?

"That was the main question of law raised in an action decided in the Court of Review yesterday by Justices Fortin, Guerin and Lafontaine, and in which the court held the employer liable under the Workmen's Act.

"The James Maclaren Company, Limited, were sued under the Workmen's Compensation Act by Medard Larocque for \$2,000 damages sustained by his son, Omer Larocque, fifteen years of age, on October 27, 1915, when his right eye was injured to such an extent that it had to be removed as the result of an accident while the lad was cutting wood in the timber shanties of the company defendant. Justice Chauvin, in the Superior Court held the company liable, and gave judgment for plaintiff for \$1,293.

"The company appealed from this judgment to the Court of

Review, submitting, in the main, that no action could be prosecuted under the Workmen's Compensation Act, inasmuch as Omer Larocque at the time of the accident was not working within the scope and meaning of the said act."

"The company appellant," said Mr. Justice Lafontaine in his notes on the case, yesterday, "possess vast timber limits wherein they cut the trees and send them to their sawmills, whence the wood in the course of commerce is distributed wherever desired. Surely, the company, in view of this fact, must have been surprised to hear it submitted that their enterprise is not an industry, but ought, rather, to be considered in law more as an agricultural exploitation. Right at the beginning of the Workmen's Compensation Act the text specifically mentions that wood yards, like stone yards and coal yards (*chantiers de bois comme des chantiers de pierre ou de charbon*), as coming within the scope of this Act. Doctrine and jurisprudence alike make the law applicable to such a case as the one in question. And in this respect it is sufficient to refer to the decision of our own Court of Appeal in the case of the Baie St. Paul Lumber Company and Dame Tremblay, 25 B. R., 1, and to the authorities there cited."

"The Court of Review accordingly confirmed the judgment of the court below, modifying it only by deducting \$30 from the expenses allowed in the first instance, and in relation to which the plaintiff had desisted. The award thus allowed to the plaintiff was \$1,263."

Leroux vs. O. Martineau & Sons, Archer, J. Judgment February 14th, 1917. Gazette, February 15th, 1917.

"In an action heard under the Workmen's Compensation Act, Mr. Justice Archer in the Superior Court yesterday decided two important points of law raised in the case.

"The first question was whether the plaintiff, Augustin Leroux, who worked in association with his brother breaking stone at the quarry of O. Martineau and Sons, the defendants, and sold, according to defendants' plea, the broken stone to them at the rate of so much a box, was, under those conditions, a sub-contractor and, therefore, outside the scope of a "workman," as interpreted by the Workmen's Compensation Act?

"Secondly, if it were decided that plaintiff was entitled to judgment under the Act, did not the fact that he was blind in his right eye at the time of the accident, render him partially disabled in the first instance and, therefore, minimize his claim to full damages under the Act for the accident which destroyed the sight of his left eye and rendered him permanently blind?

"On the two questions thus raised Mr. Justice Archer ruled in favor of the plaintiff and gave judgment condemning the defendants to pay him an annuity of \$200 as from the date of the accident, November 27, 1915, and costs.

LAW AND JURISPRUDENCE.

"Dealing with the first question His Lordship made a thorough analysis of the law and the jurisprudence governing the point at issue. The proof demonstrated, the Judge said, that plaintiff was first engaged by defendants and paid at the rate of twenty cents an hour. Two or three weeks afterwards it was decided to put him at work with his brother and to pay them thirty-five cents for every box of stone broken. In this way the work of the employees was controlled and they were paid only for work actually done. Witnesses for the defence, however, maintained that defendants had no control or superintendence over the work of the plaintiff. But if was established that they examined the stone in order to see that it

had been broken in the proportion required, and if the quantities of stone and the working hours were not sufficient defendants could have discharged the plaintiff and replaced him by another workman. It was evident, therefore, that plaintiff was not a sub-contractor. He was simply a workman paid by the piece.

"Quoting Sachet, Justice Archer went on to state that plaintiff, acting under the direction and superintendence of defendants in the manner proved, manifestly did not exercise his functions with the independence spoken of by this authority—that was to say, with an independence which would have established the plaintiff as an independent contractor, or sub-contractor. Neither could he be considered as a contractor in the light of the jurisprudence. See *B. Lacant et Wall; Beaulieu vs. Picard* (42 S. C., p. 455); *Laurentian Granite Company, vs. Henry*, Court of Appeal."

"I am of opinion, then," continued Justice Archer, "that in the present case the plaintiff, although he was not paid by the hour or day, but by the piece, or according to the quantity of stone broken by him, was a workman engaged under the superintendence of the defendants, who are, therefore, subject to the professional risks laid down in the Workmen's Compensation Act."

SECOND OBJECTION OVERRULED.

"With regard to the second question of law, referring to the amount of compensation to which plaintiff was entitled, Justice Archer said it was established that the accident had rendered Leroux permanently and completely incapacitated, and this would entitle him to an annual rent equal to fifty per cent. of his annual earnings.

"But defendants objected to such an award on the ground that, previous to his accident, plaintiff suffered from a permanent, partial incapacity, namely, blindness of the right eye. This was true; but Dr. Baullet, a distinguished specialist, had testified that if one lost the sight of an eye at an early age he would become so habituated to the loss that he would be able to use the other eye more efficaciously than would be the case if the sight of the eye had been lost at a more advanced age. The plaintiff lost the sight of his right eye when he was but a few months old.

"At the time of the accident it was shown that his average wages might be reckoned at \$400 a year, and it was upon that basis that the court must establish the rent to which he had a right. Perhaps if the man had the use of both eyes at the time of the accident, he would have occupied a better position.

"On the whole, Justice Archer found it just to make the award to plaintiff equal to fifty per cent. of his average wages at the time of the accident, without deducting anything on account of the infirmity from which he suffered before the said accident.

"Judgment accordingly for plaintiff for an annual rent of \$200 a year, and the costs of the action."

Ladouceur vs. Aird, Archer, J. Judgment, 14 February, 1917. Gazette, 15 February, 1917.

COMPENSATION FOR DELIVERY-MAN.

"In the second case decided by Justice Archer yesterday under the Workmen's Compensation Act, His Lordship condemned James M. Aird, baker, to pay W. Ladouceur \$38, plus a capital sum of \$1,042.70, and the costs of the action.

"Ladouceur entered the employ of the defendant as a driver at a wage of \$2.00 a day on March 19 last, and four days afterwards

as he was driving a bread-delivery waggon at Rockfield, on the Lachine road, plaintiff was thrown from the vehicle and sustained injuries which he alleged would partially incapacitate him for life.

"Defendant did not dispute the facts, but recognized certain liability. At the same time he questioned whether plaintiff was entitled to judgment under the Workmen's Compensation Act.

"Justice Archer pointed out that it was the character of the enterprise in which an employer was engaged, and not the nature of the work of the employee, which determined the application of this statute. In this case defendant was engaged in an industry in which motive-driven machinery was used, and this fact rendered him liable to be sued under the Workmen's Compensation Act for any accident which might happen to any of his workmen.

"It was admitted at the hearing that if the Workmen's Act did apply a sum of \$38 was already due to the plaintiff, and that he would be entitled further to a rent of \$62.40 per annum.

"Plaintiff made option for the capital of this rent, which, it was acknowledged on both sides, amounted to \$1,042.70. Judgment was given accordingly.

2. In cases to which article 1 of this Act applies, the person injured is entitled:

(a) In case of absolute and permanent incapacity, to a rent equal to fifty per cent. of his yearly wages, reckoning from the day the accident took place, or from that upon which by agreement of the parties or by final judgment it is established that the incapacity has shown itself to be permanent;

(b) In case of permanent and partial incapacity, to a rent equal to half the sum by which his wages have been reduced in consequence of the accident;

(c) For temporary incapacity to compensation equal to one-half the daily wages received at the time of the accident, if the inability to work has lasted more than seven days, and beginning on the eighth day.

The capital of the rents shall not, however, in any case except in the case mentioned in article 5, exceed two thousand dollars.

Tobin Mfg. Co. vs. Lachance, 22 R. L., n. s. 192. (K. B.).

Lorsque dans une réclamation pour incapacité partielle permanente en vertu de la loi des accidents du travail, le tribunal est appelé à examiner la preuve faite par des médecins assignés par les parties, mais non nommés comme experts par la cour, il ne doit pas mettre de côté complètement tous leurs témoignages par les motifs qu'ils ne s'accordent pas entr'eux, et qu'il lui est impossible d'en tirer une conclusion; il doit apprécier leurs dépositions, celles faites par les autres témoins et par le demandeur lui-même, et les considérer tous comme témoins ordinaires, sans qu'il soit tenu de décider sur les théories médicales ou chirurgicales professées par eux.

Moineau vs. Antonessa & Employer's Liability Assurance Corp., 25 K. B. 334.

Un accident de peu d'importance et qui ne cause aucun tort appréciable à l'employé ne donne aucun recours à celui-ci en vertu de la loi des accidents du travail.

Pour établir le capital d'une rente viagère due en vertu de la loi des accidents du travail, il ne faut pas prendre pour unique moyen les tables des compagnies d'assurances donnant la durée probable de la vie, mais aussi les perspectives de la capacité de travailler chez l'ouvrier.

Taillon vs. Dom. Box & Packing Co., Ltd., Archer, J. Judgment 14 February, 1917. Gazette, 15 February, 1917.

"\$1,080 *For Two Fingers*:—Mr. Justice Archer gave judgment yesterday condemning the Dominion Box and Package Company, Limited, to pay a capital sum of \$1,080.54 to Gilbert Taillon, suing in his capacity as tutor to his eighteen-year-old son Bruneau, who, while at work for the defendant company on September 21, 1916, suffered an accident in which two of the fingers of his right hand were cut off and his thumb injured.

"The young man was engaged in the manufacture of boxes at a salary of \$1.75 a day, and making option for a capital sum instead of an annual rent, the father sued for \$2,000, alleging that his son's earning capacity had been diminished by at least 50 per cent.

"Justice Archer held the case was proved, and that plaintiff was entitled to an annual rent of \$54. The capital was estimated at \$1,080.54, and judgment was given for this sum, with costs."

McDonald vs. Argenteuil Granite Co., Ltd. Gazette, February 19, 1914.

"\$350 *For Broken Jaw*:—John McDonald, in suing the Argenteuil Granite Co. for \$1,000, explained that on December 4th last he was engaged as a blaster, when, in igniting a fuse which had been inserted in a seam to explode a charge of dynamite, the match broke, the lighted head falling into the seam and causing a premature explosion of the charge. Both his lower and upper jaw bones were shattered by the explosion, the sight of one of his eyes was impaired, whilst the hearing of one ear was destroyed. His face was also severely burned. The employer offered to settle the case for \$350 and, McDonald agreeing to accept, judgment was handed down accordingly."

Krafchenko vs. Asbes. Corp. of Can. Ltd. Gazette, February 19, 1914.

"\$210 *For Broken Arm and Leg*:—Nicholas Krafchenko secured judgment in his favor for \$210. He sued on account of injuries sustained whilst at work for the Asbestos Corporation of Canada, Ltd. A large piece of rock fell on him, fracturing his left arm, injuring his back and breaking two bones of his right foot. He demanded \$135 as half salary for all the time he was laid up and \$33.75 as a life pension. The employer offered to settle for a lump sum as stated. This being agreeable to plaintiff, judgment was handed down accordingly."

St. Maurice Lumber Co. vs. Cadorette, 25 K. B. 410.

La preuve de l'incapacité partielle permanente par le témoignage de médecins qui ont examiné la victime est légale, lors même que, dans leur appréciation, ces médecins se guident sur les données d'auteurs.

Jennings vs. Brissette, 25 K. B. 21.

L'opinion des témoins experts, comme celle des médecins, est admissible pour prouver la réduction de la capacité de travailler, aux termes de la loi des accidents du travail.

Bibeau vs. Quinlan, Laurendeau, J. Gazette, 29 June, 1912.

"The plaintiff's son, employed by a contractor, fell through an opening in the floor of a building being erected. It was dark in that part of the building where the accident occurred. The plaintiff claimed as for permanent partial incapacity, and claimed that the victim would be unable to return to work for seven months. At the time of the accident he was earning \$15.00 a week. The court allowed \$86.20 for total temporary incapacity, dating from the eighth day after the accident to the time of the institution of the action. The defendant was ordered to pay a weekly sum of \$6.63 for the seven

months from the institution of the action, and on the ground of permanent partial disability, an annual pension of \$39.00 quarterly."

Gets \$600 For Eye Loss:—Value of workman's optic fixed in two distinct cases. Gazette, December 8, 1913.

"A workingman's eyes are worth about \$600, judging by two judgments handed down by different judges in two distinct cases over the week end. Tomasz Andrusyk, a tunneller in the employ of the C.N.R., sued the company, because, whilst he was at work hammering on a steel bar, a piece of steel hit him in the left eye, completely destroying the sight of that optic. He was laid up in hospital for several weeks and the sight of the other eye is sympathetically impaired by the mishap. The company offered to settle for \$493.90, in addition to \$75 already paid the victim and \$75 costs. Plaintiff accepted the offer and Mr. Justice Beaudin handed down judgment accordingly.

"In the other case Emilien Boyer sued Treffe Bastien for a pension of \$150, because he was hit in the eye whilst working in defendant's stone crusher at Outremont. He was pushing stones into a crusher when a piece of a wheel flew off, inflicting the injury mentioned. Mr. Justice Charbonneau ordered the defendant to pay plaintiff a lump sum of \$600, this arrangement being acceptable to both parties."

Vernava vs. M. J. O'Brien & Co. Gazette, July 19, 1914.

"\$110 for little finger:—Gregory Vernava was working for M. J. O'Brien and Co., unloading rails from a car at Hervey Junction. One of the rails fell and crushed his little finger. He settled for a lump sum of \$110."

Gagne vs. La Compagnie d'Entreprises Metallurgiques, 14 P. R. 274. Bruneau, J.

A workman, victim of an accident, is considered to have suffered an incapacity, not temporary, but partial and permanent, within the meaning of the Act, when the accident, while leaving him able to work, results in a diminution for the future of his capacity to work and in a reduction of salary.

The loss of an eye will be considered as causing a partial permanent incapacity.

The workman, in such case, will be granted an annual rent of where he worked generally as a *debardeur* for a wage of \$500 a year.

See cases and authorities cited.

This case went to Review—the Judgment in Review being reported in the Gazette of June 19th, 1913.

The Superior Court had, in accordance with a declaration fyled by plaintiff, ordered the defendant to pay the capital of the rent into La Sauvegarde, without stating the amount of such capital.

The Court of Review held that while the judgment under review was well founded, it should be modified as to its method of execution, and held that the capital to be turned over to some authorized insurance company must under no condition exceed the sum of \$2,000, under Art. 7322, R. S. Q. 1909.

Costs were, however, given against defendant, as the substance of the judgment had not been altered, but merely the mode of its execution.

Gauthier vs. Dom. Oilcloth Co., Ltd. Gazette, March 5, 1915.

"\$650 For a Stiff Knee:—Such was the award made in favor of a workingman by Mr. Justice Fortin yesterday, the ruling of the court being in accordance with a settlement reached between the parties. The plaintiff alleged that, though he was capable of engaging

in work at which he could stand, he would, as a result of the stiffness, be unable to engage in an occupation which required him to bend very much—a serious disadvantage, in view of the fact that he was fifty years of age.

"The action was taken under the Workman's Compensation Act. The case was that of *Gonthier vs. Dominion Oil Cloth Company, Limited*. The plaintiff, who was a mechanic, was engaged in boring sockets in a steel beam in the roof of the defendant's warehouse. He braced his drill upon the plank upon which he was standing, with the result that the plank broke under his weight and under the pressure of the drill exerted against the beam. Gonthier was precipitated to the floor, a distance of twenty-five feet, and fractured the bones of his left knee. By his action, he alleged permanent partial disability due to the stiffening of the joint, and claimed an indemnity equal to one-half of his reduced earning capacity, which he estimated at fifty per cent. The medical evidence showed that there was a loss of function in the knee of from fifteen to thirty per cent. While capable of work at which he could stand, he would be incapable of work requiring him to bend very much. Gonthier agreed to accept and the Company to pay, \$650.00 in full of all liability, including costs and judgment was entered accordingly."

Messrs. Heneker & Johnson appeared for the Dominion Oil Cloth Company, Limited.

Lapointe vs. Giguere, 13 P. R. 40, Laurendeau, J.

The Act does not authorize the court to create any special mode of instruction to the parties to enable them to determine the partial or permanent incapacity of the victim.

Ferland vs. Ranfall, 13 P. R. 69. Bruneau, J.

The indemnity granted to the victim of an accident is that of a rent based on his salary according to the diminution of his earning capacity, but of which the capital must never exceed \$2,000, unless the accident is due to the inexcusable fault of either workman or employer, in which case the court may diminish or increase it.

Carter vs. G. T. R. Tellier, J., 1911, 18 R. de J., p. 27.

The plaintiff was injured while loading rails on the 1st of July, 1910. He lost an index finger. He resumed work on August 1st and worked until January, 1911, when he entered suit. He was actually incapacitated only nineteen days, and began work at the same salary as before, while the company tendered him fifty per cent. of his salary for the nineteen days. It was held that as he returned to work at the same salary, this fact demonstrated that he had not suffered partial permanent disability of such a nature as to decrease his earning capacity.

Savoie vs. Can. Light & Power Co. (1916), 23 R. de J. 30. Archer, J.

Although an injured workman, a man of good education, could, by acting as a private tutor, earn as much as he was receiving while following the occupation in which he was hurt, he is, nevertheless, entitled to recover an annuity in compensation for the injuries which have depreciated his earning powers as a workman..

Carrier vs. Standard Bedstead Co. (1912), 18 R. de J. 374. Pouliot, J.

Sur une action par un employé contre le chef d'entreprise pour compensation résultant d'un accident de travail à raison de l'incapacité partielle et permanente du demandeur, ce dernier a droit à une rente annuelle égale à la moitié de la réduction que l'accident fait subir à son salaire.

Archambault vs. Labelle, 46 S. C. 387. Lafontaine, J.

Notre loi des accidents du travail, contrairement à la loi française, ne fait pas de distinction quant aux effets de la faute inexcusable, entre les indemnités auxquelles l'ouvrier a droit, qu'il s'agisse d'une incapacité temporaire ou d'une incapacité permanente, et partant cette faute inexcusable peut être invoquée dans les deux cas.

Foucher vs. Morache, 46 S. C. 498, Review.

Dans les causes sous cet Acte, la juridiction de la cour n'est pas limitée à statuer sur les droits des parties au moment de l'institution de l'action, comme dans les cas ordinaires, mais doit déterminer ceux qu'elles ont au temps du jugement, ainsi que la durée probable des incapacités de la victime dans l'avenir.

Kopyi vs. Jacobs Asbestos Mining Co., 46 S. C. 466, Review.

Les considérations de sentiment ne sauraient prévaloir sur la loi et il n'y a pas lieu, dans le cas d'un accident de travail à l'application de "minimis non curat lex" quand il y a en jeu une rente annuelle représentant un capital d'au delà de \$200.

Gagne vs. La Compagnie d'Entreprise Metallurgique, 14 P. R. 274. Bruneau, J.

The loss of an eye will be considered as causing a partial permanent incapacity.

See this case cited under section 8.

Couillard vs. John Allan, Gazette, April 8, 1914. Judgment of Charbonneau, J.

"The plaintiff had been unable to work for 124 days, and was entitled to ninety cents a day for that time. During that time and prior to the interim order he had received \$62.40, leaving a balance of \$49.20. From June 26th to February 20th, plaintiff was engaged by defendant at the same salary as he had earned before the accident. As a result of the accident, plaintiff remained subject to a certain weakness of the spine, which might affect, in a degree difficult to estimate, his capacity to work as a laborer—a capacity which had been lessened by a previous accident, to such an extent that the plaintiff had been obliged to abandon his work as a roofer, in order to take up work as a laborer at the lowest salary to do the lightest possible work. Taking into consideration these facts, as well as the age of the plaintiff, it was fitting that his pension be set at fifteen cents per working day. Accordingly the defendant was condemned to pay the plaintiff a sum of \$49.20 and an annual pension of \$45.00.

The case hinged upon the interpretation of a radiograph, in which the cartilage between two of the victim's vertebrae had hardened, or had at least changed to such an extent that it "showed up" as solid in the radiograph. The question arose whether the hardening was due to the previous injury or to the later one. The judge held that in the absence of positive proof, the court had to lean to the opinion that the condition of the inter-vertebral substance was due to the later accident. The fall was sufficient to cause the injury complained of, and the radiographs most probably showed the effects of such injury.

The judge pointed out that from the evidence it appeared that the claimant had shown a disposition to take advantage of a misfortune in order to create for himself a life pension; that he had all the ear-marks of a man in whom one might expect to find such a deceit. He had started by abandoning a good trade for insufficient reasons and had become a laborer of the lowest category. His companions did not hesitate to qualify him as a loafer and a faker. It was hard to drive away the impression that liquor and laziness had played a large part—if not the sole part—in bringing about this change. Yet the law had to be applied."

[Summarized from Gazette report.]

McLean vs. Fuller, 16 O. P. R. 50. Beaudin, J.

Dans une incapacité temporaire, la preuve doit être faite quand le demandeur sera mieux. Cette preuve devrait être faite par un médecin, si possible.

Beaupre vs. Sugars & Cannerys, Ltd., 20 R. de J. 543. Bruneau, J.

The plaintiff fell, and trying to save herself put out her hand which was caught in a moving machine and injured. The last phalange of the middle finger (right hand) and cartilage of the second phalange had to be cut away. Partial permanent incapacity. Five per cent. reduction in earnings. Rent.

Brissette vs. Jennings, 21 R. L. n.s. 305. Weir, J. (25 K. B. 21).

La victime d'un accident du travail alors qu'elle n'est âgée que de trente et un ans, et ayant gagné dans l'année précédant l'accident, un salaire annuel de \$658, a droit à une indemnité égale à la moitié de la diminution de sa capacité de travail constituant une rente annuelle de \$76.83 par année ou en capital, son choix de \$1,483.22. (In appeal, payment of rents confirmed; payment of capital reversed, 25 K. B. 21).

Bean vs. Asbestos Corp. of Can., 21 R. L. n. s. 380. Pouliot, J. (En appel).

"L'accident" dans cet Acte doit être pris dans son sens populaire et ordinaire.

Un ouvrier qui pendant son travail ordinaire soulève une pierre par un effort musculaire et qui se fait une lésion interne donnant naissance à une gastro-entérite dont il meurt, tombe sous les dispositions de cet Acte, et sa veuve a droit à une indemnité du patron.

Peterson vs. The Garth Co., 24 K. B. 165.

The fact that an employee injured and seeking relief under that Act has found employment after the accident at his former rate of pay is not a decisive proof that his earning capacity has not been diminished.

Larivière vs. Girouard, 24 K. B. 154.

Aux termes de l'Acte, l'incapacité permanente, partielle ou permanente ne peut être érigée en proposition générale, c'est une question de fait que le tribunal doit décider en se basant sur ce que la victime pouvait gagner avant l'accident, et sur ce qu'elle a pu gagner après tenant compte de l'état dans lequel elle a été réduite par cet accident.

C. P. R. vs. Flore, 24 K. B. 55.

Aux termes de cette loi, l'ouvrier auquel il est accordé une indemnité et qui ne demande pas le dépôt du capital, a droit à une rente dont le capital peut dépasser la somme de \$2,000.

Stack vs. Whittall, 48 S. C. 272. Demers, J.

Where the accident caused only a slight incapacity which does not expose the victim to any diminution in his salary, he has no claim to an indemnity for permanent and partial incapacity.

Bonneau vs. Sévigny, 47 S. C. 129 (Review), 22 R. de J. 22.

Si la Cour Supérieure se départit de la règle ci-dessus (Art. 2), il y a lieu pour un tribunal d'appel de modifier son jugement pour changer la qualité de l'indemnité ou de la rente.

Thouvette vs. Curtis & Harcey (Can.), Ltd. (Reported in Gazette, December 14, 1916).

"In the Superior Court yesterday, Mr. Justice Maclellan gave judgment condemning Curtis and Harcey (Canada) Limited, to pay the sum of \$1,787.50, following payments of \$212.50 already made,

to Harmony Thouvette as compensation for injuries he received while working at the company's mill at Rigaud.

Thouvette, a laborer, was put to work removing cotton waste as it was ejected from an automatic willower. While so engaged his left foot was caught in the machine and so badly injured that the leg had to be amputated just below the knee joint. Thouvette alleged that as a result of the accident his permanent earning power had been decreased by seventy-five per cent., and claimed he was entitled to recover from his employers an indemnity of \$5,000 under the Workmen's Compensation Act.

The company charged that the accident was due to plaintiff's imprudence in wilfully thrusting his foot into the machine, and being thus guilty of inexcusable fault he was not justified in his claim.

Justice MacLennan found that the accident happened while the plaintiff was endeavoring to gather up the cotton waste with his foot instead of removing it with his hands. Although such use of his foot was an act of imprudence, His Lordship said it did not appear that plaintiff knew at the time of the danger to which he was exposing himself, and his act was not of such a wanton and reckless character as to amount to inexcusable fault within the meaning of the Workmen's Compensation Act. Moreover, defendants had not proved that sufficient and proper instructions were given to the plaintiff when he was set to work on the machine.

Plaintiff was held to be entitled to \$2,000 indemnity, but as defendants had already paid him \$212.50 as half wages since the accident, this amount had to be deducted from the compensation, and so judgment was entered for \$1,787.50."

Mr. Callaghan appeared for plaintiff, and W. F. Chipman for the company defendant.

Repenetzky vs. City of Montreal. Gazette, February 19, 1914.

"An echo of the break in the conduit during Christmas week was heard yesterday when the Board of Control decided that the city should pay \$750 to Leonky Repenetzky, officially entered on the payroll of the city roads department as 'Polack No. 49,' for the loss of an eye while engaged with other workmen in repairing the conduit.

"Repenetzky, described as a laborer of eighteen years of age, as a result of the accident is threatened with the loss of both eyes, and in view of the circumstances the Controllers, upon the recommendation of the City Attorney, decided that the claim be settled.

"The victim of the accident on December 28th, was holding a chisel on which heavy blows were being struck by another workman. The work the men were engaged upon was breaking through the concrete work of the conduit, which is eight inches thick. While thus engaged a piece of hardened cement flew from the chisel and entered the eyeball of Repenetzky, who was unable to return to work, and an annuity of \$253.

"What the City Attorney recommended was that the victim should be paid \$730 as a quit claim, including the costs, and this has been accepted. As this arrangement was agreeable to the attorneys for the Pole the Controllers approved the payment of the said amount."

Guertin vs. Thompson. Dist. Bedford, S. C. 9253. Lynch, J. Judgment 30 June, 1914, unreported. The following is an extract from the Notes of Judgment. See also under section 25.

Plaintiff was working at an edging saw, when in the course of his work his right hand came in contact with the saw, damaging three of his fingers, and making amputation of the index finger necessary.

"The evidence is not lengthy, and on the whole is fairly what one might expect under the circumstances. From it, I conclude that plaintiff was earning at the time of the accident \$464.00. Plaintiff is entitled therefore to the ordinary amount as provided by law, and the first matter to be determined is to what extent his earning capacity has been reduced. The evidence upon that head is very conflicting as indeed might be expected. Of course, as regards the index finger, there would be no doubt that its loss is calculated to interfere with the usefulness of plaintiff as a working man. As to the other two fingers, the injury was not as great, and the only matter with them which is to be considered is the absence of sensibility, and to what extent this absence of sensibility exists. One of the medical men is of opinion that it is extremely limited, that the reduction in capacity is very slight, perhaps five per cent. Another medical man thinks it may range from forty to fifty per cent., and a practical mill man, a Mr. Poirier, of Waterloo, would fix it at one-third. I have had some difficulty in coming to a conclusion upon this head, but, taking into consideration the fact that the incapacity as regards the second and third finger, being somewhat doubtful, especially as to whether it will be a permanent disability, I am inclined to fix the reduction in earning capacity at twenty-five per cent., and upon this basis which would fix the amount at \$116.00, plaintiff is entitled to an annual pension of \$58.00, and for that amount, judgment will go accordingly."

G. T. Ry. vs. McDonell, 21 K. B. 532.

The amount of the rent is not affected by sub-paragraph two which states that capital of the rents, shall not in any case exceed \$2,000.

See remarks of Cross, J. at p. 539.

"We have been referred to annuity tables to prove that \$2,000 cannot yield a rent of \$210 a year. That, however, does not make out a case for the appellant. If it were to happen two years hence that the respondent's wages came up to the rate which he earned before the accident, and there were to be a revision under the Act, the appellant may find itself much better off, than if it paid a capital of \$2,000. The maximum of capital is fixed, not upon the footing of an ordinary annuity, but subject to the contingencies provided for in the Act. If the plaintiff considers his chance of being able to collect the rent from his employer, for an indefinite period in future, he can elect to have a lump sum set aside as capital, but, in that case, he must be satisfied with what a capital of no more than \$2,000 will yield. Besides, it is for the court to apply the measure supplied by the Act itself, namely:—'half the sum by which his wages have been reduced.'"

(Confirmed by Privy Council. See Judgment, 24 K. B. 495).

Giguere vs. Frechette, 40 S. C. 37. Pouliot, J.

By permanent incapacity is understood a diminution, reputed incurable, of earning capacity. Hence, an accident which makes necessary the amputation of two phalanges of the first and second fingers of the right hand, results in a permanent partial incapacity.

G. T. Ry. vs. McDonell, 21 K. B. 532.

In the case of a permanent partial incapacity caused by an *accident du travail*, the employer owes the victim a rent equal to half "*la reduction que l'accident fait subir au salaire*." By these words is meant the reduction of diminution of earning capacity, and the employer cannot escape his responsibility to pay the rent, by offering to keep the victim in his employ at the wage he was earning when the accident occurred.

The amount of the rent payable as above stated is not affected by paragraph two of article 7321, stating that the capital of the rent must not in any case exceed \$2,000.

Gagne vs. The Dominion Chemical Co., 13 P. R., 14. Globensky, J.

The *rente viagere* equivalent to half the amount of the diminished earning capacity will be fixed at the amount of the rent which an insurance company would pay upon a capital of \$2,000 to a healthy person of the same age as the victim.

Edmundson vs. G. T. R. Reported in Gazette, April 22, 1914.

"Another case where the offer of the employer to provide an injured workman with employment failed to offset the latter's claim for an indemnity under the Compensation Act was dealt with before Mr. Justice Bruneau yesterday, when His Lordship ordered the Grand Trunk Railway to pay Joseph Edmundson an indemnity of \$292.24 as well as a daily allowance equal to one-half of his salary until such time as the complete temporary disability arising from the accident has disappeared. Edmundson was at work, as a machinist in the defendant's shops, when a fifty-five ton locomotive, which was being raised on jacks, tilted and crushed his leg and foot so badly that he was laid up for seven or eight months. The company paid him what it represented to be his half salary for six months, but the payments ceased when Edmundson was offered and refused a job as clerk in one of the company's offices. The company represented that it was on advice of a physician that such offer had been made, the medical man attesting that the plaintiff's physical condition would permit him to take up the lighter form of work. The company in opposing plaintiff's subsequent claim for indemnity under the Act pointed to the offer which he had declined to accept and relied on this to offset plaintiff's suit for compensation.

Plaintiff averred that the physician who had advised that he take up such work was one of the company's physicians, drawing pay from the company's coffers. Hence, claimed plaintiff, such physician in giving his advice had in mind the interest of his employers. Acceptance of the offer, said plaintiff would have jeopardized his rights under the act. Moreover, he had been trained as a mechanic and not as a clerk. It was as a mechanic that his earning power had been decreased. It was thus incumbent upon the company to meet its liability under the act.

Mr. Justice Bruneau, in summing up, took no cognizance of the offer made by the company, but simply ruled that the case was one which came under the Compensation Act. Hence the condemnation as stated. Brown and Staveley for plaintiff; A. E. Beckett for the company."

3. When the accident causes death, the compensation shall consist of a sum equal to four times the average yearly wages of the deceased at the time of the accident, and shall in no case, except in the case mentioned in article five, be less than one thousand dollars or more than two thousand dollars.

There shall further be paid a sum of not more than twenty-five dollars for medical and funeral expenses, unless the deceased was a member of an association bound to provide, and which does provide therefor;

The compensation shall be payable as follows:

(a) To the surviving consort not divorced nor separated from bed and board at the time of the death, provided the accident took place after the marriage.

(b) To the legitimate children or illegitimate children acknowledged before the accident, to assist them to provide for themselves until they reach the full age of sixteen years.

(c) To ascendants of whom the deceased was the only support at the time of the accident.

If the parties do not agree upon the apportionment of the compensation, it shall be apportioned by the proper court. Nevertheless every sum paid under article two of this Act in respect of the same accident shall be deducted from the total compensation.

Thompson vs. Kearney, 25 K. B. 220.

La loi des accidents du travail est une loi d'exception; celui qui prétend bénéficier de ses dispositions est tenu d'établir qu'il est dans les conditions requises pour réclamer.

Si le demandeur est un ascendant de la victime, il doit prouver que le défunt était son unique soutien, lors de son décès, et que le salaire de ce dernier n'excédait pas \$1,000 par année.

Tremblay vs. Simoncau, 15 Que., P. R. 28. McCorkill, J.

If the declaration does not say whether the deceased was the sole support of the plaintiff or not, the Workmen's Compensation is inapplicable, as common law still exists with respect to all cases which are not specially provided for by said Act.

Jette vs. G. T. Ry. Co., 40 S. C., p. 204. Pouliot, J.

The mother of a workman who has been killed by reason of an accident, who remarries and lives with her husband, cannot pretend that her dead son was her sole support, and hence cannot exercise the recourse given in such cases under the Act.

Bernard vs. Davis et al., 42 S. C., p. 170 (Review, Lemieux, A. J. C., Cimon and Cannon, JJ.)

Hanchuk, es qual vs. Canada Cement Co., Ltd., K. B. Judgment 26 February, 1917. Gazette, 27 February, 1917.

"A unanimous judgment of the Court of Appeal yesterday establishes important jurisprudence upholding the rights of illegitimate children to damages under the Workmen's Compensation Act for the death of their father while engaged at his trade. In this, Their Lordships confirm the decision of Mr. Justice MacLennan, rendered in the Superior Court on November 14 last.

"The case was that of Aleck Hanchuk who, in his quality as guardian of the twin infant illegitimate children of a Russian named George Temczuk, killed on August 4 last, while working for the Canada Cement Company, Limited, at Longue Pointe, sued the company and asked the court to condemn defendants to pay \$2,000 to the children to compensate them for their father's death.

"Judgment was rendered for the amount stated and the company appealed.

"The question at issue was whether plaintiff had proved that Temczuk had acknowledged the children as his before the accident which caused his death happened.

"The Chief Justice, Sir Horace Archambeault, in rendering the court's judgment, said they were unanimously of opinion that the proof established that George Temczuk maintained the children from their birth until his death and that they had openly enjoyed the status and reputation of being his children with his knowledge, consent and approval. The priest of the religious denomination of which the father was an adherent, baptised the children as those of Temczuk and entered Temczuk as their father in the written entry

of birth in the private book kept by the priest of the Russian Orthodox Church. While this written entry was not an official document, it constituted a commencement of proof in writing and went to establish the proof requisite to maintain the plaintiff's claim.

"Proceeding, His Lordship rendered a learned disquisition of the law governing this question, as based on the old French laws, and incidentally quoted Demolombe to the effect that '*possession d'état* was a veritable recognition,' and that 'when a man constantly and publicly acknowledged repeatedly an infant as his own, gave it his name, provided for its maintenance, it was impossible to maintain that he had not recognized it. Although that recognition was not actually registered, it was more decisive than such an act.'

"In the light of the proof the judgment condemning appellants to pay \$2,000 to respondent on behalf of the children was confirmed with costs.

"Concurring with Sir Horace Archambeault in the judgment were Justices Trenholm, Lavergne, Cross and Carroll.

"This is the first time that a question of this kind has arisen for decision here under the Workmen's Compensation Act.

"As the circumstance that the workman, killed in an *accident du travail*, was the sole support of the ascendant relation who claims indemnity, raises only a question of fact, the judgment of the lower court thereon will not be altered in Review unless there is apparent error."

The Dominion Quarry Co. vs. Morin, 21 K. B., p. 147.

The circumstance that a workman who is killed in an *accident du travail*, was the sole support of an ascendant who sues, raises only an issue of fact. Hence, if the deceased gave the plaintiff the wherewithal to live, the latter is entitled to indemnity even though there are others bound towards plaintiff to provide alimentary support.

Palmier vs. G. T. Ry., 42 S. C., p. 435. Dunlop, J.

Notwithstanding the provision in Article 7323, R. S. Q., 1909, that Compensation is payable to children "to assist them to provide for themselves until they reach the full age of sixteen years," the child of a workman killed in an accident, whatever his age may be, however near to that of sixteen years, is entitled to recover from the employer a sum equal to four times the average yearly wages of the deceased.

Lapierre vs. Canadian Car & Foundry Co. Gazette, 29 January, 1914.

"Widow Awarded \$1,600:—The aftermath of the fatality which occurred at the works of the Canadian Car & Foundry Co., at Turcot, some weeks ago, when Hormisdas Lapierre, an oiler, was killed by the grounding of an electric current from a dynamo, took place in the local courts yesterday, when the company agreed to pay the widow \$1,600. The deceased earned \$2.00 per day. The widow sued for \$2,000, on her own behalf, and on behalf of her six minor children. The parties compromised for the above figure."

Drouin vs. Wallberg (1915), 49 S. C. 6.

In a suit under this Act all parties who have a claim to a share in the indemnity must be made parties to the suit. If all such persons are not so summoned, the defendant may stay proceedings by dilatory exception.

Croteau vs. The Victoriaville Furniture Co., 40 S. C. p. 4. Pouliot, J.

The indemnity provided by Article 7323 is not payable to the wife, to the children and to ascendants, concurrently, but successively,

the wife excluding the children and ascendants, and the children if no wife, excluding the ascendants.

Demers vs. McCrae, 40 S. C., p. 123 (Review).

Archibald, Robidoux and Fortin JJ.

The hiring and employment of a workman by a mandatary, in his own name and without disclosing his principal, establishes between them the relation of employer and employee, and entitles the representatives of the workman, in case of his death by accident in the course of his work, to the compensation provided in 7323 R. S. O. 1909

In re Frederick Turner, 13 O. P. R. 261. Bruneau, J.

Si la veuve consent à séparer avec ses enfants le montant de l'indemnité qui lui a été accordée en vertu de ce loi, il ne sera pas nécessaire d'une assemblée du conseil de famille pour autoriser le tuteur aux enfants mineurs à accepter ce montant qui n'est qu'une simple donation.

Marsolais vs. Tramways Co., 20 R. L. n. s. 348. Fortin, J.

Qu'un tuteur *ad hoc* ne peut intenter une action sous la loi des accidents du travail comme représentant une enfant mineure, fille de la victime décédée mais que cette action doit être intentée par le tuteur ordinaire.

La disposition de l'article 1312 C. C. que la sentence de séparation de biens est sans effet tant qu'elle n'a pas été exécutée, est sans application au cas de la sentence de séparation de corps, qui entraîne la séparation de biens comme conséquence secondaire.

Roberge vs. The Jacobs Asbestos Mining Co., 45 S. C. 304. Pouliot, J.

L'article trois établit trois catégories des personnes auxquelles l'indemnité prévue pour le cas de mort de la victime de l'accident, est payable, et dont chacune dans l'ordre indiqué exclut les suivant. Par suite, lorsqu'il y a un conjoint survivant, ni les enfants, ni les ascendants, qui sont dans les conditions prescrites, ne peuvent prétendre à aucune part de l'indemnité.

Contra—Huard vs. Clarke, 45 S. C. 397, Review.

La veuve de l'ouvrier défunt ne peut réclamer l'indemnité entière qu'en établissant qu'il n'existe pas d'autres parties appelées à bénéficier de la loi.

Laflamme vs. Lewis Ferry Co. (1915), 47 S. C. 291.

When a son is drowned by the negligence of his employers, his father cannot take suit under this Act if the son was not the whole support of his father, but the father may have recourse under C. C. 1056.

Lamontagne vs. The Que. Ry. L & P. Co., 50 S. C. R. 423.

The remedy given by Article 1056 C. C. in case of *delit* or *quasi-delit* was taken away in regard to the classes of persons enumerated in section three of the Quebec Statute respecting compensation for injuries to workmen, by the limitation in section fifteen thereof, but the effect of that Act was not to repeal the provisions of Article 1056 C.C., with respect to ascendant relations who were only partially dependent for support on a deceased workman to whom the statute applied. The judgment appealed from (Q. B. 23 K. B. 212) was reversed, Davies and Brodeur JJ. dissenting.

Sullivan et. al. vs. Furness Withy & Cie., Ltd., 47 S. C. 289. Charbonneau, J.

Le droit à des aliments est une réclamation attachée à la personne même des conjoints, et l'accomplissement de cette obligation peut être demandé par l'un ou l'autre, alors qu'ils sont en communauté,

mais il ne s'en suit pas que l'obligation de fournir des aliments soit une dette due à leur communauté de biens.

Ainsi une femme en communauté de biens peut intenter avec son mari une action pour indemnité en vertu de la loi des accidents du travail à cause de la mort de leurs fils, cette action étant de la nature d'une demande alimentaire.

Bean vs. Asbestos Corp. of Can., 21 R. L. n. s. 380. Pouliot, J.

Le droit de la veuve en vertu de la loi des accidents du travail ne dérive pas de la victime, mais de la loi. De sorte qu'elle n'a qu'à prouver qu'il y a eu un accident du travail qui a causé la mort de son mari; les aveux de la victime ne peuvent lui être opposés, ni affecter son droit.

Une action intentée en vertu de la loi des accidents du travail ne sera pas rejetée parce que la veuve n'a pas allégué dans sa déclaration qu'au moment du décès de son mari elle était son épouse non divorcée et non séparée de corps, si ces faits apparaissent par la preuve.

Le droit de la veuve de réclamer une indemnité en vertu de cette loi prime et exclut celui des enfants qui ne peuvent être appelés à la recueillir concurremment avec le conjoint.

4. A foreign workman or his representatives shall not be entitled to the compensation provided by this Act unless at the time of accident he or they reside in Canada, or if he or they cease to reside there while the rent is being paid: but if he or they cannot take advantage of this Act the common law remedy shall exist in his or their favour.

Gabella vs. G. T. R., 12 O. P. R. 329. Laurendeau, J.

Lorsque le défendeur est domicilié dans la province de Québec, il peut y être poursuivi en vertu de la loi des accidents du travail, quand même cet accident serait arrivé dans la province d'Ontario.

Vincent vs. G. T. R., 45 S. C. 353. Lafontaine, J.

La loi des accidents du travail de cette province s'applique au cas d'un accident survenu dans la province de l'Ontario, à un ouvrier engagé dans celle de Québec, par un patron qui y a la siège de ses affaires, pour un travail à faire dans les deux provinces.

Dame M. Johansdotter vs. C. P. R., 47 S. C. 76. Demers, J.

A mother residing in a foreign country and depending partly upon the earnings of her son for her living, can sue before the Quebec Courts under the Workmen's Compensation Act of the Province of Alberta, when her son has been killed in the service of a railway company having its principal place of business in Montreal.

Under this latter Act, the employer becomes liable to pay an indemnity to his employee by the sole fact of his being killed during his services, and the claim dates from the date of the accident.

Under the same Act, the absence in a foreign country far away, is a justification for not filing a claim within the delay fixed by law.

Dallaire vs. Que. Salvage Co. (1916), 49 S. C. 501. Dorion, J.

Le mot "étranger" dans l'article 7324 des S. Ref. 1909 (Article 4) a le même sens que dans l'article 21 du C. Civil, et signifie "aubain."

Janovitz vs. Canadian Car & Foundry Co. Panneton, J. (Reported in Gazette, July 2, 1914).

"A foreign workman has no right to make a claim under the Workmen's Compensation Act, according to a ruling just handed down by Mr. Justice Panneton, in case of interest to employers and employees generally. His Lordship had to deal with a rather unusually high claim put in by an injured workman, who demanded \$25,000 on

account of permanently disabling injuries sustained in the course of his work in the plant of the Canadian Car and Foundry Company. He averred that, being a foreigner, who had come to this country for but a short period, with the intention of returning to his homeland, he did not fall under the operation of the Compensation Act; and that thus, he was not limited to the \$2,000 maximum amount claimable, under ordinary circumstances, in virtue of the Act. Mr. Justice Panneton, after hearing both sides and after carefully scanning a mass of authorities, consisting for the most part of dictionaries giving the meaning of the word "foreign" and "foreigner," upheld plaintiff's contention and made an award of \$2,000 in his favor. Hence, apart from the decision on the principle of the thing, it mattered not in this particular case whether plaintiff had taken action under the Act or under the common law as the court considered that the maximum amount awardable under the Act represented a just appreciation of the claim entered under the common law. The suit was that of Stanislas Janovitz.

"The question is one that has been interesting quite a number of the members of the bar for some time. The interest is owing to the use of this term in the Workmen's Compensation Act. By virtue of section four of this measure, a foreign workman cannot institute proceedings under the Act unless he was at the time of the accident a resident in Canada, nor can his legal representatives. The Act goes further, and says that should a foreign workman, who has secured a judgment awarding him an annual rental on account of injuries sustained, leave Canada, he shall lose this rental.

"Knowing that this would work injustice to one who was employed in the province, but was nevertheless a foreign workman, the framers of this law inserted a qualifying clause stating that where a workman could not proceed under the Act, he still had his remedy under the common law.

"Janovitz is a young man who came to this country in April of 1912 from Russia and intended staying here but a short while and eventually returning to his own country. He sought employment with the Canada Car and Foundry Company, and was engaged as a helper at a wage of sixteen cents per hour. In June of the same year, while attending to his duties and pushing a truck, which was heavily loaded with steel plates, recoiled, and the plates fell off, throwing Janovitz to the ground and crippling him for life. It was felt that, owing to the serious nature of the injuries and the absolutely permanent incapacity resulting therefrom, that the amount allowed by the Compensation Act was too small, and that in view of the circumstances and the fact that Janovitz did not intend to make Canada his permanent home, he would be justified in proceeding under the common law.

"The action was then instituted, and Janovitz, through his attorneys, Messrs. Morrison and Rose, claimed the sum of \$25,000, setting out in their declaration that Janovitz came to this country intending to return to Russia. After a number of delays the case came finally before His Lordship Mr. Justice Panneton, and the discussion then took place between the attorneys for the plaintiff and the attorneys for the defendant, as to what was a foreign workman in accordance with the terms of the Act, and whether the plaintiff was estopped from proceeding under the common law.

"As there were no decisions on this section, counsel for the plaintiff were compelled to delve into dictionaries and other kindred works for the purpose of supplying the court with a proper and correct definition of the term "foreign." Webster, the standard dictionary, and a number of other authorities were quoted. Reference was also

made to the convention existing between France and Great Britain whereby the citizens of these two countries are entitled to proceed under the Workmen's Compensation Act of the country in which they happen to be at the moment any accident occurs to them. It was argued by counsel for the plaintiff that it was evident that the Workmen's Compensation Act excluded foreign workmen unless they intended to become British subjects by making this country their permanent residence, and that where it is proven that the injured party had only been in the country a very short time and intended returning to his native land, he was to all intents and purposes a foreign workman and could, if he saw fit, proceed under the Compensation Act or under the common law. Morrison and Rose, for the plaintiff, and Duff and Merrill for the defendant."

5. No compensation shall be granted if the accident was brought about intentionally by the person injured.

The court may reduce the compensation if the accident was due to the inexcusable fault of the workman, or increase it if it is due to the inexcusable fault of the employer.

Savignac vs. Montreal Tramways Co. Dugas, J. (1916), 18 O. P. R. 125.

Dans le cas ou la victime d'un accident du travail réclame une somme plus élevée que le montant de l'indemnité fixée par la loi, le demandeur est tenu de prouver que le dit accident est du à la faute inexcusable du patron.

Une allegation de faits qui tend à établir la faute inexcusable du patron n'est pas étrangère à la cause et ne sera pas rejetée sur inscription en droit.

Foucher vs. Moraehe, 46 S. C. 498, Review.

Lorsque une cause tombe sous la loi des accidents du travail, les principes du droit civil sur la faute ne s'appliquent pas, excepté lorsque la faute intentionnelle ou inexcusable est alléguée.

La faute inexcusable est une faute particulièrement lourde qui consiste à accomplir volontairement un acte dangereux et dont on connaît ou dont on doit connaître le danger, ou encore consiste à ne point voir ou prévoir ce que tout individu, dans les mêmes circonstances, aurait vu ou prévu. Cette faute suppose la connaissance du danger et la volonté de s'y exposer, et implique la négligence des soins ou un manque de précautions pouvant aisément prévenir un accident.

Picard vs. Henphy (1915), 17 O. P. R. 13.

If to a suit under this Act the defendant avers voluntary and inexcusable fault, negligence and imprudence, the plaintiff is justified in seeking the particulars thereof, and, in their default, the striking out of such averments.

Dame Wilfrid Pothier vs. C.P.Ry. Gazette, 20th June, 1912.

"The plaintiff, widow of Wilfrid Pothier, claimed \$10,000 because of her husband's death, inexcusable fault of the defendant being alleged. The victim, a longshoreman, while engaged in loading the "Lake Champlain," and while directing timber into the hold, was knocked off the gangway, by a piece of moving timber and was drowned. The plaintiff showed that the Company had been twice warned by Government inspectors that a larger platform should be provided on which the workmen could stand while loads were being raised to the ship. The Court held, however, that there was no special enactments by competent authority, governing the special precautions to be taken under the circumstances; and that there was no

proof of inexcusable negligence. The Company had tendered \$2,025, and judgment was rendered for this amount."

Romano vs. O'Sullivan, 23 R. L. n. s. 43. Review.

Under this Act, the fact that an accident may be due to the gross fault and negligence of the person who suffers the accident, is not a ground for rejecting the demand for compensation, but only a ground for lessening the amount of such demand.

St. Hilaire vs. Blue River Lumber Co., Ltd. (1916), 22 R. de J. 521.

Lorsque l'ouvrier victime d'un accident de travail se rend lui-même coupable d'un acte déraisonnable et commet une imprudence et une faute inexcusable dans l'exécution de son travail, au moment de l'accident, il y a lieu de tenir compte de la faute de tel ouvrier, et de diminuer, suivant les circonstances, le montant de la rente auquel autrement il aurait eu droit.

Croteau vs. The Victoriaville Furniture Co., 40 S. C., p. 44. Pouliot, J.

A workman who, in order to descend from the roof of a building, instead of using the staircase, uses in spite of orders of the foreman, a hoisting gear for hoisting materials, which a recent displacement has made dangerous, and falls to his death, commits an inexcusable fault of a kind, however, only to reduce the indemnity. The employer is also guilty of inexcusable fault in leaving on the roof a hoisting gear in bad order, and must be held responsible therefor. Hence it is appropriate to follow the common law rule as to common fault, to divide the indemnity and make the employer bear half of it.

Archambault vs. Labelle, 46 S. C. 387. Lafontaine, J.

Notre loi des accidents du travail, contrairement à la loi française, ne fait pas de distinction quant aux effets de la faute inexcusable, entre les indemnités auxquelles l'ouvrier a droit, qu'il s'agisse d'une incapacité permanente, et partant cette faute inexcusable peut être invoquée dans les deux cas. La faute inexcusable du patron comprend la faute inexcusable de son préposé. L'un des caractères de la faute inexcusable est la connaissance du danger, et consiste dans une négligence coupable et intentionnelle, et une incurie de la sécurité de l'ouvrier, et elle ne saurait être invoquée dans le cas d'une fausse manœuvre due à l'ignorance d'un danger immédiat.

Giguere vs. Frechette, 40 S. C., p. 37. Pouliot, J.

There is inexcusable fault, involving a diminution of the workman's indemnity, where the workman, in feeding material into a machine, exposes himself to the danger of being caught in the gearing, and especially where he has been previously warned against the danger.

Jette et al, G. T. Ry. Co., 40 S. C., p. 204. Pouliot, J.

A brakeman on a train, who in spite of his being forbidden by a superior officer, jumps from a car and is killed, is not the victim of an accident happening by reason of or in the course of his work. Moreover, his fault is inexcusable to the point where one can declare that the accident was intentionally provoked by him.

Tremblay vs. Baie St. Paul Lumber Co., 46 S. C. 203, Review.

Sous la loi des accidents du travail il n'y a pas de faute inexcusable de la part de la victime dans les circonstances suivantes:—L., flottage de bois, revenant au camp après sa journée de travail, par une nuit noire et pluvieuse, arriva près d'une rivière de trente-cinq pieds de large où le pont avait été dans la journée emporté par les eaux. Dans le même temps des chercheurs en voyés du camp pour le retrouver l'ayant aperçu, jetèrent sur la rivière un arbre pour en former un

pont, comme c'est l'habitude dans ces circonstances. L. tenta de traverser, mais l'arbre cassa, il fut entraîné par le courant et se noya.

Houle ex-qual. vs. The Asbestos & Asbestic Co., Ltd., 42 S. C., p. 176 (Review, Tellier, DeLorimier & Dunlop JJ.).

The power of the court to increase the compensation to a workman or his representatives, for an accident by reason, or in course of his work, if it is due to the inexcusable fault of the employer, exists as well, if the accident is due to the inexcusable fault of persons substituted to himself by the employer, and acting within the scope of their authority, in the actual performance of his work. See *Ledoux vs. Lucas dit Laplante*, 43 S. C. 427. Cited under Article 1, No. 22.

Langlois vs. Bonhomme. See cited under section 1. Not reported. See Gazette, April 10. 1914.

" Francis Bonhomme had the plumbing contract for a house, and sent Langlois, a journeyman plumber, to do the job. Upon arriving one morning, Langlois met one of the painters working in the house, who was trying to get into the cellar by way of a trap door. Langlois offered to help him open the trap door, and this he did by means of an implement which he had in his kit. Passing the spot a few hours later, Langlois forgot about the open trap door and fell through it into the cellar, sustaining severe injuries. Defendant contested the action on the ground that Langlois, in opening the trap, was not doing the work for which he was engaged, in fact was not working for defendant at all in so doing, and was inexcusably negligent. Judge Guerin held in favour of plaintiff, that there was not intentional or inexcusable fault, and that he was entitled to indemnity."

Caron vs. Que. Railway L. H. & P. Co. Dorion, J. (1916), 50 S. C. 475.

Le fait pour un électricien d'expérience de désobéir aux ordres de son patron en ne mettant pas les gants de caoutchouc qu'il lui fournit pour manœuvrer des fils électriques chargés à haut voltage, constitue une faute inexcusable donnant lieu de diminuer l'indemnité à laquelle il a droit, s'il est victime d'un accident.

De Pepin ex qual. vs. G. T. R., 47 S. C. 223, Review.

Un aiguilleur d'une compagnie de chemin de fer qui pour se rendre plus promptement à son travail, monte dans un wagon plate-forme, et qui une fois rendu à l'aiguille qu'il devait faire manœuvrer, saute en bas du wagon en mouvement et se blesse mortellement, n'est pas coupable d'une faute inexcusable pouvant faire perdre le bénéfice de la loi des accidents du travail.

The Dominion Quarry Co. & Morin, 21 K. B., p. 147.

The fact that a workman persists, in spite of warnings, to remain in a dangerous place where he is killed, establishes his inexcusable fault on account of which the indemnity must be reduced, but does not establish that the accident was brought about intentionally by him so as to deprive his heirs of the right to any indemnity.

Dougan vs. The Auer Incandescant Light Mfg. Co., 24 K. B. 188.

La faute inexcusable du patron est une faute lourde, presque volontaire du patron qui connaissant le danger refuse ou néglige de faire quoique se soit pour l'éviter. Aussi celui qui faisant réparer le plâtre du plafond d'une salle dans laquelle traversait des ouvriers en laisse une partie qui fut jugée non dangereuse, ne se rend pas coupable d'une faute inexcusable si plus tard, ce plâtre tombe et blesse l'un des ouvriers.

Poirier vs. Legrand, K. B. 22 K. B. 193.

To find inexcusable fault there must be (1) the will to do or not

to do, (2) knowledge of the danger which may result from the act of omission, (3) absence of any justifying or explanatory cause.

Semble, in France, that the inexcusable fault of a fellow employee (*prepose*) is the fault of the employer.

But there is no text on the point in our Act, and we must here, as a general rule, hold that the inexcusable fault of the co-employee is only excusable fault as regards the employer if the latter have not participated therein as did the employer in this case by engaging a young lad of fourteen without any experience to help the victim, and this after the foreman's warning.

The employer in this case was guilty of inexcusable fault in knowingly, without any useful reason—unless it be that of gain—in making the victim work on a dangerous, defective and unprotected round saw.

Krasno vs. Loomis, 11 P. R. p. 432. Davidson, J.

In an action under the Act, if the petitioner refuses the offer of compensation made by the respondent, the court has no discretion to enforce settlement at that figure, and the petition for authorization to sue shall be granted. See section 27.

In the absence of specific allegations and proof of facts disclosing inexcusable fault on the part of the employer, permission will not be granted to sue for an increased indemnity.

Proulx vs. The Dominion Chemical Co., 12 P. R. p. 86.

A petition alleging inexcusable fault of the employer and asking authority to sue for \$5,000, need not be accompanied by an affidavit.

See under section 27. *Krasno vs. Loomis*.

Viau et al & Villeneuve, 21 K. B. 263.

The workman who, knowing the danger of a machine because of the lack of protective devices, continues voluntarily to work at it and is injured, does not always fall under the rule of *volenti non fit injuria*. If the patron, knowing also of the defects of the machine, neglects to remedy them and permits the workman to continue at his work, there is common fault.

Wall vs. Cape, 24 K. B. 38.

Il est difficile de donner une définition exacte de la "faute inexcusable" au sens de la loi des accidents du travail, la décision en étant laissée à la discrétion du tribunal.

Le patron qui emploie des ouvriers travaillant sur des échafauds ne commet aucune faute inexcusable en refusant de faire construire ces échafauds par des charpentiers, et en ordonnant à ces ouvriers de les faire eux-mêmes si ces derniers ont une certaine compétence, connaissant bien le danger auquel ils s'exposent et consentent à les construire et à s'en servir sans assurer s'ils sont suffisamment solides. See also, *Lariviere vs. Girouard*, 24 K. B. 154.

Peterson vs. The Garth Co. (Reported in the Montreal Gazette, April 9, 1913). Archer, J.

"While plaintiff was at work in an elevator shaft, a chisel he was holding was struck by the descending elevator and driven through his hand. The employer had arranged with the owner of the building to have the elevator stopped while plaintiff was at work. Plaintiff was in charge of the job, and upon arriving at his work began work without notifying the owner that the elevator was running and calling upon it to stop the elevator. Nor did he notify his employers. As a skilled workman he must have had an idea of the imminent danger in which he was placed. His neglect amounted to inexcusable fault.

"He asked for \$1,523, or a life pension equal to one half the amount

by which his earning capacity was reduced. He returned to work as his full previous salary, but the court considered it established that his earning capacity had been reduced as in his trade he required the full use of his hands. The diminution of earning capacity was estimated at eight per cent. His average earnings were \$800.80. However, under the Act, when the wages exceed \$600 a year, the surplus up to \$1,000 shall give a right to one quarter of the compensation mentioned. He would be entitled therefore to a pension or rent of \$26 a year. Owing to his inexcusable fault, this pension was reduced to \$20."

Held in appeal:—24 K. B. 165. There was not inexcusable fault.

6. If the yearly wages of the workman exceed six hundred dollars, no more than this sum shall be taken into account. The surplus up to one thousand dollars shall give a right only to one-fourth of the compensation aforesaid. This Act does not apply in cases where the yearly wages exceed one thousand dollars.

C. P. R. vs. Frechette, 23 K. B. 511.

La loi des accidents du travail ne s'appliquant pas lorsque le salaire annuel de l'ouvrier est plus élevé que \$1,000 c'est au patron qu'il incombe de faire cette preuve d'exception.

Reynolds vs. Can. Light & P. Co., 48 S. C. 500 (Review).

When a workman is paid by the hour and his work is suspended for a time until he is recalled to resume the same work at the same salary, he is entitled for the purpose of establishing that this Act does not apply to his case, to add to the actual amount of salary he did receive, the amount he would have received, had he worked continuously.

Couture vs. G. T. R., 16 O. P. R. 221. Charbonneau, J.

Quand la victime ne peut pas poursuivre en vertu de la loi du travail que son salaire est au-delà de \$1,000, son action tombe sous le droit commun, et une action prise en vertu de la loi de compensations sera rejetée.

Frechette vs. C. P. R., 45 S. C. 209 (Review).

Le patron poursuivi en recouvrement de dommages-intérêts causés par son débit ou quasi-débit, doit pour avoir le bénéfice de la loi du travail, l'invoquer par plaidoyer et établir l'existence des conditions qui le rendent applicable. Son défaut de le faire laisse au poursuivant le droit d'exercer le recours du droit commun.

Par Lemieux A. J. C., ce moyen doit être invoqué par un plaidoyer préliminaire de la nature d'une exception déclinatoire.

7. Apprentices are assimilated to the workmen in the business who are paid the lowest wages.

Touchette vs. The Dom. Textile Co., 15 O. P. R. 298. Charbonneau, J.

Le mineur de plus de quatorze ans autorisé par la cour à poursuivre en vertu de la loi des accidents du travail n'a pas besoin de l'assistance d'un tuteur.

Wilson vs. G. T. R., 47 S. C. 67. Globensky, J.

The recourse given under Act 7321, R. S. O., 1909, depends upon the existence of an express or implied contract between the victim and the party against whom the demand is directed and the plaintiff must prove such contract.

An apprenticeship is a contract in virtue of which a person undertakes to teach another a profession, trade or calling upon certain conditions, during a stipulated term, which contract creates reciprocal obligations between the contracting parties.

Boutin vs. The Corona Rubber Co., Ltd., 13 O. P. R. 282. Lau-
rendeau, J.

Un contrat de louage de services entre un enfant de douze ans et une compagnie industrielle est nul absolument et ne peut avoir d'existence légale parcequ'il est fait en contravention à une loi d'ordre public.

8. The wages upon which the rent is based shall be, in the case of a workman engaged in the business during the twelve months next before the accident, the actual remuneration allowed him during such time, whether in money or in kind.

In the case of workmen employed less than twelve months before the accident, such wages shall be the actual remuneration which they have received since they were employed in the business, plus the average remuneration received by workmen of the same class during the time necessary to complete the twelve months.

If the work is not continuous the year's wages shall be calculated both according to the remuneration received while the work went on, and according to the workman's earnings during the rest of the year.

Lcdoux vs. Lucas dit Laplante, 43 S. C. p. 427. Martineau, J.

In fixing the rent payable by reason of an accident, if the case is that of the 2nd paragraph of Article 7328, R. S. Q., 1909, the court will base itself on the remuneration actually in force with his employer. Account cannot be taken of a more lucrative employment which plaintiff had elsewhere during the year, nor of his enforced idleness during his employment in the course of which he was injured. The workman who is idle is presumed to be so voluntarily and it is for him to establish the contrary.

Lariviere vs. Girard, 24 K. B. 154.

Le fait que depuis l'accident l'ouvrier aurait gagné autant qu'avant n'est pas conclusif sur la question de sa capacité de travail si habituellement son travail est intermittent, et que le taux de son salaire varie selon les ouvrages auxquels il est employé.

Dallaire vs. Que. Salvage Co. (1916), 49 S. C. 501. Dorion, J.

Le recours de la loi des accidents est ouvert aux parents d'un ouvrier tué accidentellement, et qui gagnait \$92.00 par mois au moment de son décès, s'il était engagé dans l'exploitation d'une industrie dont le travail n'est pas continu, et si son salaire annuel restait inférieur à \$1,000.

Kennedy vs. Thom (1916), 49 S. C. 211. Lemieux, C. J.

Pour établir le salaire annuel qui doit servir de base à l'indemnité pour incapacité permanente, lorsque le travail n'est pas continu, il faut ajouter au salaire effectivement gagné par l'ouvrier pendant la période d'activité le gain qu'il a réellement fait pendant le reste de l'année, et non un gain fictif calculé en moyenne des gains qu'il a pu faire aux périodes de chômage, pendant un certain nombre d'années.

Naud vs. Girard, 25 K. B. 407.

Une usine qui depuis son établissement n'a jamais fonctionné pendant douze mois consécutifs, mais seulement par intervalles irrég-

guliers, doit être considérée comme une entreprise dont le travail n'est pas continu.

Aussi pour déterminer l'indemnité payable à un ouvrier qui y subit un accident du travail, on doit établir son salaire annuel en ajoutant, à la rémunération qu'il a reçue pendant la période de travail le gain qu'il a pu faire pendant la reste de l'année.

Langlois vs. C. P. R. (Reported in Gazette, December 29, 1916.

"An important question of law under the Workmen's Compensation Act was decided in a judgment rendered by Mr. Justice Archer in the Superior Court yesterday in the case of Rosanna Langlois, widow of Narcisse Duquette, who sued the Grand Trunk Railway Company under the aforesaid act for \$2,025 compensation for the death of her husband while he was in the company's service on December 31 last.

"The deceased had not been a regular employee of the company, but had worked as a supplementary helper. At the time of his death he was engaged as a brakeman, earning \$3.60 a day, and as this was equivalent to upwards of \$1,000 a year, the company submitted that the Workmen's Compensation Act could not be applied to his case.

"Justice Archer, however, ruled that, in the circumstances, the deceased's wages at the time of the accident could not be accepted as a basis on which to reckon the man's annual salary. The amount paid on that basis must be counted only during the period of actual payment on that basis. For the rest of the year the court must reckon according to the average remuneration paid to workmen of deceased's class. From October 10 to December 31 Duquette had been paid the higher remuneration, but the average of his class during the balance of the year brought his wages within the \$1,000 limit and gave his widow legal right in her present action. Thus with the law in her favor and the facts of the accident not disputed, Justice Archer awarded the plaintiff the full amount of her claim.

"The law, His Lordship said in his judgment, provided that if the work was not continuous the year's wages should be calculated both according to the remuneration received while the work went on and according to the workman's earnings during the rest of the year. It had been proved that the plaintiff's husband had been in the service of the company defendant from October 10, 1915, until December 31 following, the date of the fatal accident, and that during that period his wages amounted to \$271.32.

"The act provided that in the case of a workman employed for less than twelve months before the accident his wages should be the actual remuneration he had received since he was employed in the business, plus the average remuneration received by workmen of the same class during the time necessary to complete the twelve months. The deceased had been employed as a supplementary helper, a class of workman whose wages were not so high as a regular workman, and for the balance of the year's wages of the deceased the court must take the average of this class. The proof had showed that this would be \$659.36 for a period necessary to complete the twelve months' service of Duquette. This, added to the \$271.32 actually received, formed a total of \$930.68. Therefore the plaintiff was within her legal rights in invoking the Workmen's Compensation Act as the basis of her action. She had proved the essential allegations of her claim, whereas the company defendant had failed to prove the essential allegations of its defence. Therefore its plea was dismissed, and the company condemned to pay the plaintiff \$2,025, with costs."

Carrier es qual. vs. The Standard Bedstead Co., 18 R. de J. 374. Pouliot, J.

Dans l'espèce l'employé ayant travaillé moins de douze mois avant l'accident, et à la tâche, son salaire annuel doit être basé sur le salaire annuel moyen des ouvriers de la même catégorie les moins rétribués de la compagnie défenderesse et ce salaire moyen est de cinquante centins par jour.

Le fait que le dit employé aurait depuis le dit accident occasionnellement gagné un salaire plus élevé que cinquante centins par jour à l'emploi d'une autre compagnie, ne fait pas obstacle à ce qu'il reçoive une indemnité à raison et en proportion de la diminution de sa capacité professionnelle et de ses facultés de travail.

Foucher vs. Morache, 46 S. C. 498. Review.

Pour la fixation du salaire annuel il faut trouver le salaire dégagé de tout accident que l'ouvrier a reçu pendant le temps qu'il a été au service de son patron avant l'accident, et lorsque l'ouvrier a travaillé moins de douze mois avant l'accident, ajouter au salaire gagné, la rémunération moyenne d'un ouvrier de la même catégorie, à fin de compléter les douze mois et former le salaire annuel que, dans la condition normale de son travail, l'ouvrier aurait pu toucher pendant l'année.

Kopyi vs. Jacobs Asbestos Mining Co., 46 S. C. 466. Review.

Dans le cas d'un ouvrier employé depuis moins de douze mois avant l'accident, le salaire moyen d'ouvriers de même catégorie pris outre la rémunération de la victime depuis son entrée dans l'entreprise, comme base de fixation d'une rente pour réduction de capacité de travail, est celui effectivement reçu et non celui qui aurait dû être reçu, et la cour en absence de preuve de ce salaire, ne peut le présumer.

9. As soon as the permanent incapacity to work is ascertained, or, in case of death of the person injured, within one month from the date of the agreement between the employer and the parties interested, or, if there be no agreement, within one month from the date of the final judgment condemning him to pay the same, the employer shall pay the amount of the compensation to the person injured or his representatives, or, as the case may be, and, at the option of the person injured or of his representatives shall pay the capital of the rent to an insurance company designated for that purpose by order in council.

Macdonald vs. C. P. Ry., 22 K. B. 207.

The rent payable to a workman, victim of an accident, is determined according to his yearly wage, the reduction thereof caused by the accident, or of daily wage which he was earning at the date of the accident, according as he comes under clauses (a) (b) or (c) of Article two of the Act. The capital of \$2,000 mentioned in the second paragraph of the Article does not refer to the amount of the rent, but fixes the maximum capital sum which the workman can exact in lieu of rent, if he decides to exercise his option under Article nine.

Martin vs. Cape (1916), 49 S. C. 347. (Review).

Under the Compensation Act, the judgment debtor of a rent has the right to select any one of the insurance companies designated for that purpose by order-in-council to which the payment of the capital, shall be made when the judgement creditor of the rents makes option that the capital be paid to an insurance company.

The amendment, 4 Geo. V. (1914) c. 57 has no retroactive effect.

Page vs. Town of Joliette (1916) 49 S. C. 437. Review.

Si le demandeur poursuivant en vertu de la loi des accidents du travail pour incapacité permanente demande le capital de la rente que la loi lui accorde, le cour ne peut condamner le patron à payer cette rente, si mieux il n'aime en payer le capital à la victime. Le jugement doit condamner à payer le capital à l'ouvrier.

Moineau vs. Antonessa & Employers' Liability Assurance Corp., 25 K. B. 334.

Lorsque le capital est payé directement au demandeur, il faut également tenir compte du cout de l'administration de ce capital qu'exigerait une compagnie d'assurance, tandis que l'employée, dans le cas où il touche ce capital, n'a pas à encourir ces frais.

Jennings vs. Brissette, 25 K. B. 21.

Le Statut de 1914 (4 Geo. V., c. 57) amendant la loi des accidents du travail, qui permet à l'ouvrier dans le cas d'incapacité permanente de demander un capital au lieu d'une rente, n'a pas d'effet rétroactif.

Cette loi ne doit être considérée déclaratoire et interprétative qu'au sujet du fait que la loi des accidents du travail n'avait pas enlevé le recours du droit commun appartenant aux personnes qui ne peuvent se prévaloir de cette loi.

L'amendement mentionné ci-dessus n'empêche pas le patron de faire reviser l'indemnité accordée en vertu de l'Article 7346, s. ref. 1909, même s'il a payé le capital à l'ouvrier.

("The person injured or his representatives may, at their option, demand the payment to themselves of the amount of the compensation, or of the capital of the rent, which shall in no case exceed \$2,000, whether in case of death, or of incapacity which would entitle him to an annual rent; saving the case provided for in Article 7325," 1914, 4 Geo. V. Ch. 57).

C. P. R. vs. McDonald, 24 K. B. 495. (Privy Council).

The Article 7329, R. S. O. 1909, which provides that "at the option of the person injured or of his representatives (the employer) shall pay the capital of the rent to an insurance company," etc., interprets the reference to capital in Article 7322, sub-section.

Blanchette vs. Black Lake Consolidated Asbestos Co., 20 R. de J. 605. Pouliot, J.

Le choix de la compagnie d'assurance, entre toutes autorisées aux fins de la loi des accidents du travail, à laquelle le capital devra être versé, appartient, non au chef de l'entreprise, mais à la victime de l'accident, qui a intérêt à ce que cette somme capitale constitue un placement de tout repos et productif des revenus les plus avantageux.

Brissette vs. Jennings, 21 R. L. n. s. 305. Weir, J. (The Court of Appeal, November 3, 1915, confirmed the condemnation to pay the rent, but reversed the judgment as to payment of capital).

Depuis la loi déclaratoire de 1914 (4 Geo. V., c. 57), sur la portée de l'article 7329, R. S. O. 1909, la victime a droit de faire option pour le paiement à elle-même du capital nécessaire pour créer la rente annuelle qui lui est accordée. (See in appeal, 25 K. B. 21).

Waters vs. E. G. M. Cape & Co., Ltd. Greenshields, J. (Reported in Gazette, September 28, 1916).

"In discharging the *delibere* in a case under the Workmen's Compensation Act in the Superior Court yesterday, Mr. Justice Greenshields elucidated a very important legal point under this Act. It was to the effect that an injured workman, even when he charges inexcusable fault against his employer, is not entitled to claim judg-

ment for a capital sum in his favor to the extent and upon the same grounds as though he had taken action under the common law.

Thomas P. Waters, plaintiff in the present action against E. G. M. Cape & Company, Limited, had claimed a sum of \$4,442 under the Workmen's Compensation Act, alleging inexcusable fault on the part of the company defendant, and complaining that he had suffered a permanent disability through an accident while working for the defendants at the works of Canadian Vickers, Maisonneuve.

"It will be noticed," said Mr. Justice Greenshields, "that the plaintiff, although claiming that he is partially and permanently incapacitated, does not pray that the court do award him an annual rent, but simply prays for a condemnation in damages generally, as though the action were taken under the common law, and not in virtue of the Workmen's Compensation Act. In my opinion the plaintiff's claim as made is unfounded.

"Under the Workmen's Compensation Act, the only thing the court can do—and must do—in the event of permanent incapacity is to fix the annual rent that shall be paid to the injured person. In the case of inexcusable fault the court may increase the rent beyond the statutory limit, and thus indirectly, of course, increase the capital of that rent. But the first thing to do, and, I think, the only thing to do, is to fix the rent.

"Consequently, I hold—and I do this knowing that possibly there may be a difference of opinion on the point—that the amendment to the Workmen's Compensation Act, as found in 6 George V., chapter 7, does not give plaintiff the right to demand payment to him of a lump sum."

On this ground His Lordship discharged the *delibere* and gave plaintiff opportunity to amend his claim and ask the court to fix the amount of rent he is entitled to in the event his action is maintained.

A PERTINENT AMENDMENT.

The amendment to which Mr. Justice Greenshields referred to and under which it has been contended an injured workman has the right to demand payment of a lump sum under the Act, reads as follows:

"The person injured or his representatives may, at their option, demand the payment to themselves of the amount of the compensation, or of the capital of the rent (which shall in no case exceed \$2,000, whether in the case of death or of incapacity), which would entitle him to an annual rent, saving the case provided for in Article 7235 of this Act."

This qualifying provision gives the injured workman the option within a month after he obtained judgment of forcing the employer condemned by the court judgment to pay the capital of the rent to an insurance company designated for that purpose by Order-in-Council.

This provision was added with a view to insure the workmen of their compensation and safeguard them against loss if their employers, through business failure or other cause, were unable to meet their liabilities under the court judgments, which judgments, however, must, it is contended, fix the amount of rent before giving consideration to the question of the capital sum."

10. The rents, payable under this Act, shall be paid quarterly.

The compensation in case of temporary incapacity is payable at the same time as the wages of the other employees, and at intervals in no case to exceed sixteen days.

11. The Lieutenant Governor in Council may prescribe the conditions upon which the insurance companies applying by petition to be authorized to pay the said rents in virtue of this Act, shall be authorized so to do; but no company that has not made a deposit with the Government of Canada or of this Province, in conformity with the laws of Canada or of this Province, of an amount deemed sufficient to ensure the performance of the obligations, shall be so authorized.

Blanchette vs. Black Lake Consolidated Asbestos Co., 20 R. de J. 605. Pouliot, J.

La responsabilité du chef de l'entreprise à compter du dépôt de la somme capitale dans une compagnie d'assurance agréée par le Lieutenant Gouverneur en Conseil, et de ce moment, il n'a plus d'intérêt dans le montant de la rente susceptible d'en découler.

On ne peut imposer à la victime, l'obligation d'accepter comme débitrice du paiement de la rente, une compagnie dont le principal siège social est en dehors de la Province de Québec.

12. All compensation to which this Act applies, shall be unalienable and exempt from seizure, but the employer may deduct from the amount of the indemnity any sum due to him by the workman.

Caron vs. The Que. Ry. L. H. & P. Co. (1916). Dorion, J., 50 S. C. 475.

Lorsqu'un patron a payé à son employé, victime d'un accident du travail, des sommes plus considérables que l'indemnité à laquelle il a droit pour la période d'incapacité temporaire, il y a lieu de réduire d'autant l'indemnité compensatrice de la diminution permanente de sa capacité de travail.

13. The compensation prescribed by the proceeding articles shall be entirely at the charge of the employer, and the employer shall not, for this purpose, deduct any part of the employee's wages, even with the consent of the latter.

SECTION II.

Liability for Accidents.

14. The person injured or his representatives, shall continue to have, in addition to the recourse given, by this Act, the right to claim compensation under the common law from the persons responsible for the accident other than the employer, his servants or agents.

The compensation so awarded to them shall, to the extent thereof discharge the employer from his liability; and the action against third persons responsible for the accident, may be taken by the employer at his own risk, in place of the person injured or his representatives, if he or they refuse to take such action after having been put in default so to do.

Asselin vs. Ottawa Transportation Co., Ltd. Judgment of Bruneau, J., 17 January, 1911. (Not reported).

The plaintiff made the usual petition. The Ottawa Transportation Company contended in opposition to the petition that the C.P.R. was responsible for the accident, and that Asselin must under section fourteen first look to that company. The Transportation Company

thereupon notified the C. P. R. of the petition and of the date of hearing, and called upon it either to settle or defend the claim, both of which the C. P. R. refused to do.

The Transportation Company then served a notice on Asselin's attorney calling upon him to direct his claim first of all against the C. P. R. The plaintiff declared his refusal to do so.

Judgment was thereupon rendered upon the original petition authorizing an action *in forma pauperis* against the Transportation Company, and granting *acte* of the notice putting Asselin in default to sue the C. P. R.

Biggs vs. G. T. R., 18 R. de J. 383. Review.

By an inscription in law, the defendant cannot raise questions of fact, nor deny the facts alleged, and the facts alleged must be presumed to be true.

The plaintiff, father of the victim, sued at common law, alleging that as his son was not his sole support, he could not bring action under this Act. Defendant inscribed in law.

As the evidence alone can disclose the actual facts, the court will in such case order *preuve avant faire droit*.

Demers vs. McCrae, 40 S. C. 123. Review.

The hiring and employment of a workman by a mandatory, in his own name, and without disclosing his principal establishes between them the relation of employer and employee, and entitles the representatives of the workman, in case of his death by accident in the course of his work, to the compensation provided by this Act.

Forget vs. Baillargeon, 12 P. R., p. 270. Bruneau, J.

In an action under the Act, the employer who is sued may demand the suspension of proceedings until after judgment has been rendered in another case against a third party whom he wishes to hold responsible for the same quasi-delictual damages.

Here, the defendant was served with the usual petition. Defendant served a notice on plaintiff putting her in default to sue, not himself, but Peter Lyall & Sons, Ltd., who, defendant alleged, was directly responsible for the accident. Defendant then brought action against the Lyall firm, and moved in the present case, under section fourteen of the Act, by way of dilatory exception accompanied by the usual deposit, asking that all further proceedings under the Petition be stayed until the action against the Lyall firm was finally adjudicated upon.

It was held, as above suggested, that Baillargeon would be relieved of his obligation to the extent of any condemnation against Lyall; and that he was therefore interested to know the amount of such condemnation, if any, before being called upon to pay any sum, and was entitled to have proceedings suspended until the result of the action against Lyall should be known.

Forget vs. Baillargeon, Judgment of 21 January, 1911. Bruneau, J. S. C. No. 1680.

Hence where the plaintiff moved for an alimentary pension of \$6.00 a week pending the action taken by Baillargeon against the third party, it was held that the matter was *chose jugée*, by virtue of the above judgment which ordered all proceedings to stop as against Baillargeon. This judgment is not reported.

Dubreuil vs. Dominion Bridge Company. Beaudin, J. Gazette, February 19, 1914.

"Eugene Dubreuil is suing the Dominion Bridge Company because of an accident which occurred whilst he was at work on a building.

on St. Patrick street. Someone dropped a brick on him from an upper storey on January 6th last. He has been unable to work ever since. He was earning \$3.00 per day and he demanded half salary for all the time he would be laid up, as well as a pension of \$450 per year for life. He asked to be authorized to sue for these amounts. The company, in opposing the petition, pleaded that permission to take suit be not granted until such time as the plaintiff should have taken an action under the common law against the person or persons who dropped the brick. Mr. Justice Beaudin considered that this was a point which had better be discussed at the hearing on merits. Hence the petition was granted."

McMillen vs. G. T. R., 13 O. P. R. 175. Charbonneau, J.

The jurisdiction given to the court under this Act is special and limited. It is a sort of procedure "*en conciliation*," an occasion to bring the parties together in order to prevent a lawsuit if possible.

Although it may be clearly shewn that the petitioner has a rather weak case under the Act, the court would not be justified in dismissing plaintiff's demand in *limine*.

The court has no jurisdiction to authorize the taking of a joint special action under both this Act and the common law.

Boutin vs. The Corona Rubber Co., Ltd., 13 O. P. R. 282. Lauren-deau, J.

Un contrat de louage de services entre un enfant de douze ans et une compagnie industrielle est nul absolument, et ne peut avoir d'existence légale parceque qu'il est fait en contravention à une loi d'ordre public.

S'il arrive un accident à cet enfant au cours de son travail, son père pourra réclamer des dommages en vertu du droit commun, mais non en vertu de la loi des accidents au travail.

Tremblay vs. Simoncau, 15 Que. P. R. 28. McCorkill, J.

The Workmen's Compensation Act, where it may be said to apply, has supplanted the common law as between the employer and the employee and his representatives and done away entirely with the common law recourse under the provisions of Article 1053 and following of the Civil Code.

15. The employer shall be liable to the person injured or to his representatives mentioned in Article three of this Act, for injuries resulting from accidents caused by or in the course of the work of such person, in the cases to which this Act applies, only for the compensation prescribed by this Act.

Lesage vs. Henderson, 15 O. P. R. 328. Weir, J.

If plaintiff in an action for damages alleges that the accident was caused by reason of his work, and by the "inexcusable fault" of defendant, and prays that the latter be condemned to pay him an annual rent under the Act, or in default of its applicability, to pay him the sum of \$10,000, he must, on a dilatory motion, optate between the two rights of action set forth in his declaration.

Lamontagne and The Quebec Railway L. H. & P. Co., 50 S. C. R. 423.

The remedy given by Article 1056 of the Civil Code in cases of délit and quasi-délit, was taken away in regard to the classes of persons enumerated in section three of the Quebec Statute respecting compensation for injuries to workmen, by the limitation in section fifteen of that Statute, but the effect of these enactments was not to repeal the provisions of Article 1056 c.c., with respect to ascendant

relations who were only partially dependent for support on a deceased workman to whom the Statute applied. The judgment appealed from (Que. R., 23 K. B. 212) was reversed. Davis and Brodeur, JJ., dissenting.

16. All moneys paid by any insurance company or mutual benefit society, shall be applied, to the extent thereof, on account of the sums and rents payable in virtue of this Act, if the employer proves that he has assumed the assessments or premiums demanded therefor. But the employer's liability shall continue if the company or society neglects to pay or becomes unable to pay the compensation for which it is liable.

(a) It is forbidden for any employer to make any retention of any part of the salary or wages of his workmen or employees for purposes of insurance against accidents or sickness happening by reason of or in the course of their work, even with the consent of such workmen or employees. (1915, 5 Geo. V., c. 71).

(b) Any agreement under which such a retention is made or authorized shall be null and of no effect. (1915, 5 Geo. V., c. 71).

(c) In any case where such retention is made, the workman or employee, in the three months following the end of his contract of work, may recover, before any court of competent jurisdiction, the amount so irregularly withheld from his salary or wages.

2. This Act shall not apply to any retentions which may have been legally made before its coming into force.

3. This Act shall not apply to railway employees who individually, and in good faith, take out policies of insurance, and give written orders to their employers to pay the premiums out of their wages or salaries.

17. Workmen who usually work alone shall not be subject to this Act from the fact of their casually working with one or more other workmen.

Thorne vs. Roy, 41 S. C., p. 305. Lemieux, A. J. C.

Article 7337, S. R. Q., 1909, refers only to a casual fellow employee. The section applies when only one workman is employed, and he is entitled to claim under the Act.

18. The person injured shall be bound if the employer requires him so to do, in writing, to submit to an examination by a practicing physician chosen and paid by the employer, and if he refuses to submit to such examination or opposes the same in any way, his right to compensation as well as any remedy to enforce the same shall be suspended until the examination takes place. The person injured shall, in such cases, always be entitled to demand that the examination shall take place in the presence of a physician chosen by him.

Hunt vs. City of Montreal. Judgment of Lane J., 22nd November, 1913. Reported in Montreal Gazette, November 25th.

"The plaintiff's wife suffered injury to her knee by a fall upon the sidewalk. The city pleaded climatic conditions, and the fact that

the wife had refused to undergo an operation which would have cured her. The plaintiff's proof was that when the hospital doctors said they could not guarantee the operation, the chances of success exceeded those of failure, but, in addition to the danger of blood poisoning and death, there was the danger that a permanently rigid and stiff knee might result which would make amputation necessary. Her family doctor strongly advised against the operation. The woman, therefore, refused to undergo it.

"I find," said the learned judge, "the risk which plaintiff's wife ran of a permanently stiff or rigid knee and of amputation of the leg, together with the advice of her family physician against the operation, do not show her refusal to undergo an operation to have been unreasonable, but the reverse. The test is whether in refusing the person injured acts reasonably or unreasonably." (Citing *Putton vs. Owners of SS. Majestic*, 25 Times Law Reports, p. 484 Court of Appeals, 1909)."

Catzo vs. C. P. R. (1915), 17 O. P. R. 302.

If the plaintiff has been examined by physicians in support of a claim under the Act, the defendant is not thereby denied the right to have him examined by a physician chosen and paid for by the employer.

Hunt vs. Cape, 47 S. C. 390. Archer, J.

Where the plaintiff in an action under this Act has been examined by a doctor, at the request of the defendant, the court cannot make an order for a further examination of plaintiff by another doctor; and even if such an order was given, the court has no power to enforce it.

Pelletier vs. Lachance, 47 S. C. 526. Belleau, J.

Nul doute que l'ouvrier est obligé de se soumettre aux traitements et aux opérations chirurgicales ordinaires jugés nécessaires et qu'il ne peut intentionnellement, dans le but d'augmenter la responsabilité de son patron, aggraver sa condition et ses blessures, mais il n'est pas tenu de subir un traitement ou une opération qui mettrait sa vie en danger, ni l'amputation d'un membre, ni la chloroformisation. Il n'est pas astreint à plus de prévoyance et à un plus grand discernement que ne lui en suggèrent l'instinct de sa conservation, et à l'intérêt qu'il a à sa guérison future.

Un patron qui consent à ce que son ouvrier blessé se soumette à un traitement irrégulier, ne peut ensuite se plaindre de son insuccès et chercher à dégager sa responsabilité par ce moyen. Il en est ainsi lorsqu'un ouvrier s'étant fait casser la jambe le patron consent à ce qu'il se fasse soigner par un rebouteur.

19. Every agreement contrary to the provisions of this Act shall be absolutely null.

Giguere vs. Frechette, 40 S. C. 37. Pouliot, J.

So long as it has not been determined by agreement of the parties or by a final judgment that an accident results only in temporary incapacity, any transaction between employer and workman is null and void as being against public order, and the nullity may be opposed by one party as against the other.

Trudel vs. Levasseur (1915), 49 S. C. 319.

No release can be granted from all liability under this Act.

Girard vs. Naud, 48 S. C. 429. Dorion, J.

La loi des accidents du travail en est une d'ordre public, et toute transaction à l'effet de soustraire le patron aux obligations que lui impose cette loi est nulle de plein droit.

(See also, *Naud vs. Girard*, 25 K. B. 407).

St. Maurice Lumber Co. vs. Cadorette, 25 K. B. 410..

Toute convention contraire à la loi des accidents du travail est nulle.

Trudel vs. Levasseur et al. (1915), 49 S. C. 319. Martineau, J.

Un employé ne peut, pour aucune considération, relever son patron de toute responsabilité relativement à l'indemnité à laquelle il a droit en vertu de la loi des accidents.

Un employé qui, faisant erreur sur son véritable état pathologique, reconnaît que son incapacité de travailler a cessé, n'est pas lié par cette déclaration.

Maryland Casualty Co. vs. Dominion Flour Mills Co. (1916). 49 S. C. 262.

The insurer of the employer, even with subrogation from the representatives of the workman, cannot exercise any rights under the Act against the person responsible for the accident. But the insurer may exercise such a recourse if he has reimbursed the employer what the latter has paid, and obtained a subrogation in all his rights. The insurer who reimburses an employer what he has paid to the person injured cannot obtain a legal subrogation, but he may stipulate a conventional subrogation in his insurance contract.

SECTION III.

Security.

20. The claim of the person injured or of his representatives, for medical and funeral expenses, as well as for compensation allowed for temporary incapacity to work, shall be secured by privilege on the moveable and immoveable property of the employer, ranking concurrently with the claim mentioned in paragraph nine of Article 1994 of the Civil Code.

Payment of compensation for permanent incapacity to work, or in respect of an accident followed by death, shall so long as the compensation has not been paid, or so long as the sum necessary to procure the required rent has not been paid to an insurance company or otherwise paid in virtue of this Act be secured by a privilege upon moveable property of the same nature and rank, and by a privilege upon immoveable property ranking after other privileges, and after hypothecs.

St. Maurice Lumber Co. vs. Cadorette, 25 K. B. 410.

Aux termes de notre loi, le patron n'est pas tenu aux frais médicaux et pharmaceutiques lorsque l'accident n'a pas causé la mort de la victime. Cependant, s'il a choisi lui-même le médecin et fait des arrangements avec les directeurs d'un hôpital, sans consulter la victime, il ne peut lui tenir compte de ce qu'il a payé à ces fins.

SECTION IV.

Procedure.

21. The Superior Court and the Circuit Court shall have jurisdiction of every action or contestation in virtue of this Act, in accordance with the jurisdiction given to them respectively by the Code of Civil Procedure.

Bonidetti vs. C. P. Ry., 13 P. R., p. 236. Laurendeau, J.

On a petition under the Act, for permission to sue, it is not necessary to decide whether the law of another province governs the case, if the petitioner shows a sufficient cause of action.

See *Gabella vs. G. T. Ry.* 12 P. R. 329. Laurendeau, J.

Gabella vs. G. T. Ry., 12 P. R. 329. Laurendeau, J.

When the defendant is domiciled in the Province of Quebec, he may be sued there under the Act, though the accident may have happened in the Province of Ontario.

Vincent vs. G. T. Ry. Lafontaine, J. Gazette, March 13, 1913.

"A workman, engaged in the Province of Quebec, and falling under the provisions of this Act at the time of and by the fact of his engagement as a workman, is governed by this Act, though he may be killed while in the performance of his duties in another province.

"The obligation assumed by the employer by the engagement of the workman was a contractual one.

"The man was killed in Ontario. Where proof of the employer's fault would be necessary. Under the Quebec Compensation Act proof of fault is of course unnecessary."

22. Review and appeal of or from judgments susceptible thereof shall be taken within fifteen days from the rendering of such judgments, and if not so taken the right thereto shall lapse. Such appeals shall have precedence.

Donaldson vs. Roy, 17 R. L. (N. S.) p. 448, K. B.

There is no appeal from a judgment granting leave to sue under the Act.

C. P. R. and McDonald, 16 D. L. R. 830. (Supreme Court of Canada).

An appeal to the Supreme Court of Canada from the K. B. (Que.) is not shewn to be within the jurisdiction as involving a matter in controversy to the sum or value of \$2,000 (R. S. C. 1906, Ch. 139, S. 46), and will be quashed for want of jurisdiction, where the defendant employer is the appellant from a provisional judgment under this Act for \$450, loss of the workman's earnings for six months, and for an annuity of \$337.00 payable only so long as his physical condition as affected by the injury justifies the continuance of the compensation.

See *Bonneau vs. Scrigny*, 47 S. C. 129. (Review).

23. The court or judge may, upon petition, at any stage of the case, whether before judgment or while an appeal is pending, grant a provisional daily allowance to the person injured or to his representatives.

Little vs. Gale, Hutchinson, J. (Sherbrooke), Gazette, November 10th, 1911.

"The plaintiff alleged that he was working for defendant at the rate of \$2.00 a day, and while so employed met with an accident by which he was permanently and partially incapacitated. He asked for an indemnity of \$25.00, being half the wages he had lost, and an annual rent of \$97.50.

"The defendant confessed judgments for the \$25.00 and for an annual rent of \$39.40. This confession the plaintiff refused. The plaintiff then petitioned under section twenty-three to be granted a provisional allowance of twenty-five cents a day.

"It was held that he was only entitled to this daily allowance, provided his demand for an annual rent was proved to be correct—namely, for the \$97.50. On the other hand, if the defendant's contention as to the rent was correct, plaintiff was only entitled to ten cents a day. Until the amount of the annual rent had been determined, plaintiff's petition could not be granted except for the amount of ten cents a day, and this was too small an amount to be paid daily without causing trouble and inconvenience. The petition was dismissed, costs to follow the final result of the action."

The Dominion Quarry Co. vs. Morin, 18 R. L. (N. S.) p. 1 (K. B.)

In an action for indemnity or damages under the Act, when the case is pending in appeal, the court having jurisdiction to grant a provisional alimentary indemnity under Article twenty-three of the Act, is the Superior Court and not the Court of Appeal.

Canada Cement Co., Ltd. vs. McNally (1916), 18 P. R. 134 (K.B.)

La loi des accidents du travail laisse une entière discrétion à la Cour Supérieure ou à un juge de cette cour pour accorder, pendant l'instance, une allocation journalière à la victime.

Sutherland vs. The Phoenix Brass Works, 13 P. R. 408. Charbonneau, J.

According to the Workmen's Compensation Act, the plaintiff's provisional alimentary allowance pending the suit should be fixed as much as possible on the same basis as the final allowance will be determined.

Mougeau vs. The Dominion Textile Co., No. 465, S. C. Montreal, Judgment 21 January, 1911. Bruneau, J.

Plaintiff made the usual petition to be authorized to sue, which was granted. Before issuing action, however, he made another petition asking for an alimentary allowance equivalent to half his weekly wage of \$14.00.

On the second petition, held, that it was premature, and should not have been made until after action was brought, though it need not be withheld until after production of a plea.

Dural vs. Viens, 12 O. P. R. 338. Guerin, J.

Une demande pour la discontinuation d'une pension provisoire en vertu de la loi des accidents du travail, laquelle a été accordée de consentement et par jugement, pour une période indéterminée, doit se faire par action et non par requête.

Duguay vs. The Canada Iron Corp., Ltd., 15 O. P. R. 290. Bruneau, J.

Une demande pour pension provisoire en vertu de la loi du travail sera accordée, même si la compagnie défenderesse déclare qu'elle a été mise et qu'elle est actuellement en liquidation.

24. There shall be no trial by jury in any action taken in virtue of this Act, but the proceedings shall be summary, and shall be subject to the provisions of the Code of Civil Procedure respecting such matters.

25. The action to recover any compensation to which this Act applies shall, as against all persons, be subject to a prescription of one year.

Pelland vs. The Touzin Sand Co. (1916), 50 S. C. 280. Lafontaine, J.

L'employé qui a obtenu un premier jugement en vertu de la loi des accidents, peut poursuivre de nouveau si, subséquemment, il a constaté qu'il avait subi une incapacité permanente.

La prescription, dans ce cas, ne court pas du jour de l'accident, mais du jour de la découverte de l'aggravation de l'état de la victime.

Page vs. Town of Joliette (1916), 49 S. C. 437. Review.

La signification et la présentation de la requête aux fins d'être autorisé à poursuivre sous l'empire de la loi des accidents du travail est une procédure initiale d'instance et constitue une interruption civile de prescription.

Quebec & Lake St. John Ry. Co. vs. Forques, 24 K. B. 538.

Les paiements faits par le chef d'industrie à l'ouvrier, victime d'un accident à l'occasion de son travail, impliquent une reconnaissance de la dette en principe, et interrompent la prescription de l'action en recouvrement des indemnités prévues à la loi des accidents du travail, sans qu'il y ait lieu de considérer si le patron n'a entendu admettre qu'une incapacité temporaire, au lieu d'une incapacité permanente, les recours dans les deux cas faisant l'objet d'une seule et même action.

Johansdotter vs. C. P. R., 47 S. C. 76. Demers, J.

Under the Workmen's Compensation Act of Alberta the absence in a foreign country far away is a justification for not filing a claim within the delay fixed by law.

Ruffin vs. Quebec & St. Maurice Industrial Co., 45 S. C. 400. Cooke, J.

La requête prévu à l'article 7347 R. S. O. n'interrompt pas la prescription, si l'action elle-même n'est pas signifiée dans l'année de la date de l'accident.

Foucher vs. Morache, 46 S. C. 498. Review.

Lorsqu'un demandeur inclut dans sa demande toute l'indemnité à laquelle il peut avoir droit, et que son action implique l'affirmation du droit total du créancier, elle interrompt la prescription, non seulement quant à l'indemnité journalière due au moment de l'action, mais également quant à ce qui pourrait devenir du par la suite sur la même cause d'action.

Guertin vs. Thompson, Dist. Bedford, S. C. 9253. Lynch, J. Judgment 30th June, 1914, unreported. The notes of judgment are as follows:—

"This is an action under the Workmen's Compensation Act of Quebec, and plaintiff alleges that while in the employ of defendant, at the Township of Sutton, in said district, on the 14th March, 1913, he was working at an edging saw, when in the course of his work, his right hand came in contact with said saw, damaging three of the fingers of said hand, and rendering it necessary to amputate the first or index finger, and on account of which, he will remain partially infirm as regards said right hand for the rest of his life, and has been rendered incapable partially and permanently to do the same work as he had previously done—that said saw was in bad condition and was not protected and was dangerous for any one using it, and that defendant, on account of his gross negligence in connection with said saw, is responsible for the said accident—that he was earning at the time an annual salary of \$468.00—that his earning capacity has been reduced by one-half in consequence of said injury, and that he is entitled to an annual rent of \$117.00 which should be doubled in consequence of the gross and inexcusable negligence of defendant; and he concludes for judgment accordingly. Defendant meets the action by a plea in which he practically denies the allegations of plaintiff, alleging that plaintiff was receiving at the time of the accident, \$9.00 per week, and he further alleges that plaintiff's action, if any he had, was prescribed at the time it was instituted and served on him; and

he concludes for the dismissal of the action. Plaintiff answers that plaintiff's action is not prescribed inasmuch as the prescription was interrupted on account of the service upon defendant of the petition for authorization to bring the action.

"The first question which presents itself for adjudication is the question of prescription. Article 7345 of the Revised Statutes of Quebec provides:—"The action to recover any compensation to which this sub-section applies shall, as against all persons, be subject to a prescription of one year;" and Article 7347 provides that:—"Before having recourse to the provisions of this sub-section, the workman must be authorized thereto by a judge of the Superior Court upon petition served upon the employer." Plaintiff's contention is that this petition for authorization is the commencement of the action and had for effect to interrupt the prescription which had commenced, as will have been observed, the accident took place on the 16th of March, 1913, and on the 12th of March, 1914, the plaintiff served his petition for authorization upon defendant, notifying him to appear before the judge on the 19th of March, defendant not appearing, the petition was granted by the judge the same day, and the action was instituted on the 20th of March and served upon defendant the 26th of March. So that, if defendant's contention be well founded, the action was not instituted and served upon him within the delay provided by Article 7345. This is an interesting question and has not been adjudicated upon so far as I am aware, except by Mr. Justice Cooke, in a case of *Puffinen vs. The Quebec & St. Maurice Industrial Company*, 20 R. L. (N. S.), 85. There, the action was not instituted until more than a year after the accident, although the petition for authorization was granted within the year; and the learned judge held that prescription had accrued. Our law on the subject of compensation to employees in cases of personal injury is a new one, and constitutes a radical departure from the provisions of our Civil Law bearing upon the subject. It is copied largely from the French law in reference to the subject; and evidently, the intention is to limit this class of actions to the consideration of the courts within a limited time. It is said by plaintiff that Article 2226 of the Civil Code applies—that Article is in the following sense:—"The judicial demand in proper form served upon the person whose prescription it is sought to hinder, or filed and served conformably to the Code of Civil Procedure when a personal service is required creates a civil interruption." Now, the whole question is: Is the petition for the authorization to bring an action under the Workmen's Compensation Act a judicial demand within the meaning of Article 2224? In other words, is the petition for authorization the commencement of the action which the workman may have against his employer? The law itself does not expressly say so, but has it that effect? On referring to section 7347, we find that the judge to whom such a petition is presented, has no authority, except it be with the consent of both parties—his mission is to try and effect a conciliation or settlement between them. If they do agree, he may render judgment in accordance with the agreement upon the petition, and such judgment is rendered as the final judgment of a competent court. Mr. Justice Beaudin, in a case of *Martin vs. The Molson's Bank*, 15 Q. P. R. 147, held, following the judgment of the Court of Review in the case that he refers to, that:—"The judge's mission is solely to endeavor to conciliate the parties, and that where he can not succeed in doing so, it is his duty to refer the subject to the proper court and to grant the petition, affirming the position that the petition for authorization is a conciliation bearing a strong resemblance to the proceeding which is followed in France in regard to most suits which are brought before the courts there. The subject in France and especially in its relation

to the conciliatory proceedings and their effect as interrupting prescription is fully considered by Mr. Laurent in Vol. 32, No. 87 and following. The views expressed by Mr. Laurent are endorsed by Marcadé, in his work, Vol. 12, No. 161. Both these distinguished authors agree in opinion that the conciliatory proceeding being obligatory on the part of the creditor, constitutes a part of the action, a necessary and an indispensable part without which the action cannot be taken. I am disposed to adopt this view in this case and to differ from my learned colleague, Mr. Justice Cooke, to do otherwise would, it seems to me, work an injustice to the present plaintiff and to others situated like him, who, I think, were fairly justified in inferring that the petition for authorization is the initiatory proceeding, and forms a substantial part of the action itself. So viewing the matter, I shall put aside the defendant's plea of prescription."

26. A demand to revise the amount of the compensation, based on the alleged aggravation or diminution of the disability of the person injured may be taken during the four years next after the date of the agreement of the parties as to such compensation or next after that of the final judgment. Such demand shall be in the form of an action at law.

Dural vs. Vius, 12 P. R. p. 338. Guerin, J.

A demand to discontinue payment of a provisional pension under the Act, which was granted by a consent judgment for an indefinite period, must be made by way of an action, and not by petition.

See *Bonneau vs. Serigny*, 47 S. C. 129. (Review).

Brissette vs. Jennings, 21 R. L. (N. S.) 305. Weir, J.

Dans un cas d'amputation de ponce gauche, il est à la discrétion du tribunal de déterminer s'il peut y avoir aggravation ou atténuation de la blessure donnant ouverture à une recours ultérieur éventuel pendant quatre ans par l'article 7346, S. R. O. 1909. (In appeal. Judgment 3rd November, 1915, confirming condemnation to pay rent and reversing judgment as to payment of capital, 25 K. B. 2).

Trudel vs. Levasseur et al. (1915), 49 S. C. 319. Martineau, J.

Un employé ne peut, pour aucune considération, relever son patron de toute responsabilité relativement à l'indemnité à laquelle il a droit en vertu de la loi des accidents.

Un employé qui faisant erreur sur son véritable état pathologique, reconnaît que son incapacité de travailler a cessé, n'est pas lié par cette déclaration.

Pelland vs. The Touzin Sand Co. (1916), 50 S. C. 280. Lafontaine, J.

L'employé qui a obtenu un premier jugement en vertu de la loi des accidents du travail, peut poursuivre de nouveau si, subséquemment, il a constaté qu'il avait subi une incapacité permanente.

La prescription, dans ce cas, ne court pas du jour de l'accident, mais du jour de la découverte de l'aggravation de l'état de la victime.

27. Before having recourse to the provisions of this Act, the workman must be authorized thereto by a judge of the Superior Court upon petition served upon the employer. The judge shall grant such petition without the hearing of evidence nor the taking of affidavits, but may before granting the same use such means as he may think useful to bring about an understanding between the parties. If they agree he may render judgment in accordance with

such agreement upon the petition, and such judgment shall have the same effect as a final judgment of a competent court.

(a) Nothing contained in this sub-section (Article 7321-7347 a), shall be interpreted as doing away with any of the common law rights of action belonging to any persons who cannot avail themselves of the said sub-section. This Act shall not affect pending cases. (1914, 4 Geo. V. c. 57).

Couture vs. G. T. R., 16 O. P. R. 221. Charbonneau, J.

Quand la victime ne peut pas poursuivre en vertu de la loi du travail parceque son salaire est au-delà de \$1,000, son action tombe sous le droit commun, et une action prise en vertu de la loi de compensation sera rejetée.

Page vs. Town of Joliette (1916), 49 S. C. 437. Review.

L'ouvrier qui poursuit son patron en vertu de cette loi n'est pas tenu de donner l'avis préliminaire d'action requis par la loi dans les actions intentées contre les municipalités, que l'obligation de donner cet avis provienne des statuts de droit commun ou qu'elle ait été insérée dans une charte spéciale.

Lorsqu'une corporation municipale paie une provision alimentaire à un de ses employés victime d'un accident pendant qu'il était à son service, elle ne peut, si elle est ensuite poursuivie en dommages—intérêts par cette personne, plaider le défaut d'avis préliminaire d'action.

McMullan vs. G. T. Ry. 13 P. R., p. 175. Charbonneau, J.

The jurisdiction given to the court in the matter of the Workmen's Compensation Act is special and limited. It is a sort of procedure *en conciliation*, an occasion to bring the parties together in order to prevent a law suit if possible.

Although it may be clearly shown that the petitioner has a rather weak case under the Act, the court would not be justified to dismiss plaintiff's demand *in limine*.

The court has no jurisdiction to authorize the taking of a joint special action under the Workmen's Compensation Act and under the common law.

Boyer vs. The Canadian Car & Foundry Co., 13 P. R., p. 109. Charbonneau, J.

The tutor may validly, without the intervention of a family council, be authorized to give a discharge for the amount granted to the minor by reason of an accident.

Proulx vs. The Dominion Chemical Co., 12 P. R., p. 86. Gloubensky, J.

A petition alleging inexcusable fault of the employer and asking authority to sue for \$500, need not be accompanied by an affidavit.

Cf. Krasno vs. Loomis.

Donaldson vs. Roy, 17 R. L. (N. S.) 448 (K. B.)

The judge may grant leave to sue, under Act twenty-seven, without exacting any proof either by witnesses or by affidavit, the judge having no discretion to exercise.

Krasno vs. Loomis, 11 P. R., p. 432. Davidson, J.

In the absence of specific allegations and proofs of facts disclosing inexcusable fault on the part of the employer, permission will not be granted to sue for an increased indemnity.

See the considerant at p. 433:—

Considering that the petitioner must allege specifically facts supported by specific affidavits tending to show that there has been inexcusable fault on the part of the employer before permission to

sue for increased compensation will be granted, which the petition in this case has not done.

Considering that plaintiff, although given opportunity, does not furnish such details.

Cf. Proulx vs. The Dominion Chemical Co.

Laverdure vs. The Gres Falls Co., 18 R. L. (N. S.) 69. Tourigny, J. Que dans certaines circonstances spéciales alors par exemple, que le patron contre lequel on réclame le bénéfice de la loi des accidents du travail nie, sous serment, avoir jamais employé le pour suivant, le juge peut requérir celui-ci de fournir certains détails qu'il n'a pas donnés concernant ses relations avec celui-là; et sur refus de sa part, refuser l'autorisation demandée malgré les dispositions de l'article 7347 des S. R. O.

Magloire Robin vs. City of Montreal. Reported in Montreal Gazette, June 3, 1914.

Civic workmen need not give the statutory notice of claim before bringing action under this Act, the rule applying only in suits involving delictual or quasi-delictual responsibility, whereas the responsibility under this Act is contractual.

Caille vs. City of Montreal, 15 O. P. R. 174. (Review).

En vertu de l'article 7347 le juge de la Cour Supérieure n'étant chargé que de concilier les parties, ne peut, quelque soit la cause de la non-conciliation, que constater l'accord ou le désaccord des parties, sans le juger, et les renvoyer devant le tribunal, seul compétent pour apprécier le bien ou le mal fondé de la demande, comme des exceptions qu'elle soulève. Il n'a pas à décider si l'accident tombe sous le coup de l'article 7321 des S. R. O.

Bonidetté vs. C. P. R., 13 O. P. R. 236. Laurendeau, J.

Sur une requête pour être autorisé à poursuivre en vertu de la loi des accidents du travail, il n'y a pas lieu de décider si c'est la loi d'une province étrangère qui s'applique à l'espèce du moment que le requérant montre une cause suffisante d'action.

Dorion vs. The Phoenix Bridge & Iron Works, Ltd., 13 P. R., p. 127. Charbonneau, J.

Petitioner alleged he had contracted rheumatism through being forced to stand in the water while employed in the work of building a bridge. It was urged on behalf of the Company that no "accident" was alleged, and that even if petitioner did contract a disease like rheumatism, there was no element of accident about it. It was held that the Act did not apply, and the petition was dismissed.

Donaldson vs. Roy, 17 R. L. (N. S.) p. 448. (K. B.).

The judge must grant the petition for authorization to sue, without exacting proof by witness or affidavit, the judge having no discretion to exercise.

Norico vs. The E. B. Eddy Co., 12 O. P. R. 319. Weir, J.

A petition to sue under this Act will be dismissed if it refers to an action in lumber shanties.

Fontaine vs. Can. and The East Smelting Co., 48 S. C. 230. Bru-
neau, J.

La requête pour autorisation de pour suivre constitue l'acte introductif d'une instance.

Kopyi vs. Jacobs Asbestos Co., 46 S. C. 466. Review.

L'offre d'un règlement faite devant le juge, autorisé par la loi à essayer de concilier les parties avant d'autoriser la poursuite, non plus que les admissions ou concessions qu'elles ont alors pu faire dans

un but de conciliation, ne peuvent être invoquées au procès par les parties.

Germain vs. Ville de Maisonneuve, 15 O. P. R. 145. Beaudin, J.

Le juge ne peut pas refuser à une partie de pour suivre sous cette loi.

Gagnon vs. Demers, 15 O. P. R. 100. Charbonneau, J.

Quoiqu'il y ait des forts doutes de savoir si un peintre qui a fait une chute en travaillant à une maison à raison de tant de l'heure puisse poursuivre en vertu de cette loi, la cour ne renverra pas à liminé sa requête pour poursuivre.

Francoeur vs. Cairnie et al., 16 O. P. R. 118. Bruneau, J.

Une requête pour poursuivre en vertu de cette loi constitue l'acte introductif de l'instance, et l'émission subseuente du bref d'assignation n'est que l'exécution d'une ordonnance des parties devant un autre tribunal également compétent.

L'omission d'insérer dans le bref et la déclaration, l'ordonnance autorisant l'ouvrier à intenter l'action, n'est pas une cause de nullité de l'assignation.

28. This Act shall come into force on the first day of January 1910, and shall not apply to pending cases nor to accidents which have happened before it came into force.

PROVINCE OF ONTARIO.
THE WORKMEN'S COMPENSATION ACT.

(4 GEO. V., CHAP. 25)

WITH AMENDMENTS OF 1915.

(5 GEO. V., CHAP. 24)

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PROVINCE OF ONTARIO.

THE WORKMEN'S COMPENSATION ACT WITH AMENDMENTS OF 1915.

Note.—Consolidated for convenience, reference to the amendments being shown in *Italics* at the end of the sections.

The Workmen's Compensation Act, 4 Geo. V., chap. 25, was passed 1st May, 1914, and became operative as respects payment of compensation on 1st January, 1915.

The amending Act, 5 Geo. V., chap. 24, was passed 8th April, 1915, but by section 34 thereof all its provisions except those contained in sections 10, 93a and 98a of this consolidation have effect from the commencement of The Workmen's Compensation Act.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PRELIMINARY.

1. Short Title.—This Act may be cited as *The Workmen's Compensation Act*.

2. Interpretation.—(1) In this Act:—

- (a) **"Accident."**—"Accident" shall include a wilful and an intentional act, not being the act of the workman and a fortuitous event occasioned by a physical or natural cause;
- (b) **"Accident Fund"**—"Accident Fund" shall mean the fund provided for the payment of compensation, outlays and expenses under this Act in respect of Schedule 1; (*As amended by s. 1 (1), c. 24, 1915*);
- (c) **"Board."**—"Board" shall mean Workmen's Compensation Board;
- (d) **"Construction."**—"Construction" shall include reconstruction, repair, alteration and demolition;
- (e) **"Dependents."**—"Dependents" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death or who but or the incapacity due to the accident would have been so dependent;
- (f) **"Employer."**—"Employer" shall include every person having in his service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry, and where the services of a workman are temporarily let or hired to another person by the person with whom the work has entered into such a contract the latter shall be deemed to continue to be the employer of the workman whilst he is working for that other person;
- (g) **"Employment."**—"Employment" shall include employment in an industry or any part, branch or department of an industry;
- (h) **"Industrial Disease."**—"Industrial Disease" shall mean any of the diseases mentioned in Schedule 3, and any other disease which by the Regulations is declared to be an industrial disease;

- (i) **"Industry."**—"Industry" shall include establishment, undertaking, trade and business;
- (j) **"Invalid."**—"Invalid" shall mean physically or mentally incapable of earning;
- (k) **"Manufacturing."**—"Manufacturing" shall include making, preparing, altering, repairing, ornamenting, printing, finishing, packing, assembling the parts of and adapting for use or sale any article or commodity;
- (l) **"Medical Referee."**—"Medical Referee" shall mean medical referee appointed by the Board;
- (m) **"Member of the Family."**—"Member of the Family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, grandfather, stepson, stepdaughter, brother, sister, half-brother and half-sister, and a person who stood in *loco parentis* to the workman or to whom the workman stood in *loco parentis*, whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child, shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents;
- (n) **"Outworker."**—"Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials;
- (o) **"Regulations."**—"Regulations" shall mean Regulations made by the Board under the authority of this Act;
- (p) **"Workman."**—"Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour, or otherwise, but when used in Part I shall not include an outworker, or a person engaged in clerical work and not exposed to the hazards incident to the nature of the work carried on in the employment. (*As amended by s. 1 (2), c. 24, 1915.*)

(2) **Municipal Corporations, Etc., and School Boards.**—The exercise and performance of the powers and duties of:—

- (a) a municipal corporation;
- (b) a public utilities commission;
- (c) any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation;
- (d) the board of trustees of a police village; and
- (e) a school board,

shall for the purposes of Part I be deemed the trade or business of the corporation, commission, board of trustees or school board, but the obligation to pay compensation under Part I shall apply only to such part of the trade or business as, if it were carried on by a company or an individual, would be an industry for the time being included in Schedule 1 or Schedule 2, and to workmen employed in or in connection therewith.

PART I.—COMPENSATION.

3. Compensation to Workmen.—(1) Where in any employment to which this Part applies personal injury by accident arising out of and in the course of the employment is after a day to be named by proclamation of the Lieutenant-Governor in Council caused to a workman his employer shall be liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned except where the injury:—

(a) **Exceptions.**—does not disable the workman for the period of at least seven days from earning full wages at the work at which he was employed, or

(b) is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

(2) **Presumptions.**—Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

(3) **Compensation to Date from Disability.**—Where compensation for disability is payable it shall be computed and be payable from the date of the disability.

(4) **Section Not to Apply to Casual Employment.**—This section shall not apply to a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business.

Cases Under Sec. 3, Act 55, V. C. 30.

Moore vs. J. D. Moore Co., 4 O. L. R., 167 (C. A.)

The plaintiff, a boy between 14 and 15 years of age, was employed by defendant in cleaning up round a machine—called a dove-tailing machine, consisting of rapidly revolving knives, carrying pieces of board therefor, and on one occasion he had cleaned it. He had carried some boards and had laid them down by the machine, and was going for another load when he was directed by the operator to straighten them out. On his proceeding to do so, and not observing that the machine was in motion, he put his hand out to remove some dust on it when his arm was caught in the machine and cut off. The machine was of a very dangerous character, and the knives when revolving, had the appearance of a solid stationary cylinder. There was no guard or protection around it, and no one at the time was in actual charge of it.

Negligence of defendant was found, and contributory negligence of plaintiff was negatived.

Linden vs. Trussed Concrete Steel Co., 18 O. L. R. 540. (Affirmed by Supreme Court of Canada).

Injury to workman—hazardous employment—unskilled workman—absence of guard.

Nigro vs. Donati, 8 D. L. R. 213, Court of Appeal, Ontario, confirming decision of lower court, reported at 6 D. L. R. 316.

Where a foreman in charge of blasting operations charges a drill hole with dynamite, and forgetting that he has done so, orders one of the workmen to clean out the hole, and the workman is injured by an explosion of such dynamite, the foreman's employer is responsible to the workman for such injuries.

Nigro vs. Donati, loc. cit.

Under sub-sec. 2 of sec. 3, giving to workmen the same right of compensation and remedies against the employer as if the workman was not in the service of the employer for personal injuries caused by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him whilst in the exercise of such superintendence, it is not necessary that such superintendence should be exercised directly over the workman injured, or that the workman should be acting under immediate orders of such superintendence, and it is enough if the superintendent and the workman are both employed in the furtherance of the common object of the employer, although each may be occupied in distinct departments of that common object; but the case is much stronger where the plaintiff was under the orders of the foreman doing the work in question.

(*Darke vs. Canadian General Electric Co.*, 4 D. L. R. 259; *Kearney vs. Nichols*, 76 L. T. J. 63, followed.)

Carnahan vs. Robert Simpson Co., 32 O. R. 328.

The plaintiff was a dressmaker in defendant's departmental store, and, while descending in its elevator after her day's work, was injured by the fall of the elevator. The cause of the fall, apart from defects in the elevator, was the failure of the operator to manage it and to use the controlling brake which otherwise would have controlled it.

Held, that the defendant was not answerable at common law for such neglect, which was that of the plaintiff's fellow-servant, under the Workmen's Compensation for Injuries Act, for the fellow-servant was not a person having any superintendence intrusted to him within s. 2 (1) and 3 (2).

Lawson vs. Packard Electric Co., 16 O. L. R., 1 (D. C.)

The plaintiff, a boy under 15, was engaged by the defendant's foreman to help anyone who needed help on a certain floor, except one man, who was doing piece work. He had been helping a man, who was operating a stamping machine, to put plates through the machine, and the former leaving for a few minutes, he took hold of the press and tried to get a plate out, and apparently, through his inadvertently touching the foot press, the die came down and he lost three fingers.

Held, the defendants were liable, as the foreman, while exercising superintendence, was negligent in not pointing out to plaintiff which of the machines were dangerous, and cautioning and instructing him as to them, and if it was intended that he should not attempt to operate any of them, expressly forbidding him to do so.

Shea vs. John Inglis Co., 12 O. L. R., 80 (C. A.)

The infant plaintiff, a lad of 18, was engaged with two men in rivetting the plates of a boiler. It was the duty of one of the three to heat the rivets, of the second to place them in position, and of the third to fasten them by means of an hydraulic hammer which he put in operation by a lever. This man directed the infant plaintiff to go inside the boiler to hold back a loose stay which was coming in the way of the rivets, and the infant plaintiff while in the boiler was injured.

Held, affirming the decision of the Divisional Court, 11 O. L. R. 124, that the man who was using the hydraulic hammer was in effect necessarily entrusted with the superintendence of the whole

operation, that to his orders the infant plaintiff was bound to conform, and the accident having happened, owing to this man's negligence, the infant plaintiff was entitled to damages.

The Toronto Ry. Co. vs. Snell, 31 Can. S. C. R. 241.

The motorman of an electric car may be a "person who has charge or control" within the meaning of s. 3 of the Workmen's Compensation Act. R. S. O. 1897, c. 160, and if he negligently allows an open car to come in contact with a passing vehicle whereby the conductor who is standing on the side in discharge of his duty, is struck and injured, the Electric Company is liable for such injury.

Affirming Ont. Court of Appeal, *Snell vs. Toronto Ry.*, 27 O. A. R. 151.

Martin vs. G. T. R. (4 O. W. N., 51, in Court below), 8 D. L. R. p. 590. Ont. Court of Appeal.

Sub-sec. 5 of sec. 3 of the Workmen's Compensation for Injuries Act, R. S. O., 1897, ch. 160, making the employer liable where the injury is caused by reason of the negligence of any person in the service of the employer who has the charge or control of any points, signal, locomotive, engine, machine or train, etc., should receive a liberal construction in the interests of the workman.

(*Gibbs vs. Great Western Ry. Co.*, 12 Q. B. D. 208; *McCord vs. Cammell & Co.* (1896) A. C. 57, referred to).

Allan vs. G. T. R., 8 D. L. R. 697.

Where a brakeman engaged in coupling cars at night is injured by reason of the negligence of the engineer of the locomotive in failing to wait for a new signal to start, it having been prearranged between the two that the brakeman was to give such signal by lantern, the master is liable under sub-sec. 5 of sec. 3 of the Workmen's Compensation for Injuries Act, making an employer responsible "by reason of the negligence of any person in the service of the employer who has the charge or control of any points, signal, locomotive, engine, machine, or train upon a railway, tramway or street railway."

Martin vs. G. T. R., 4 O. W. N. 51. applied.

McLaughlin vs. Ont. Iron and Steel Co., 20 O. L. R. 335.

An overhead crane in defendant's factory, operated by electric power, was used to raise and move heavy castings. M., the man who operated the crane, sat in a cage which ran upon the rails, and from it he regulated the movement of the crane. The crane was lowered and raised under the direction of the foreman from the ground below. The crane was raised over plaintiff's head and while being raised the cable parted and a heavy hook fell and injured plaintiff.

The jury found negligence on the part of M. in hoisting the crane over plaintiff's head. It was held that M. was a person within the meaning of clause 5 of sec. 3 of the Workmen's Compensation for Injuries Act.

Clause 5, as it now stands, is much wider in its scope than as it stood in the first Ontario Act, 49 Vict., c. 28.

the workman, or, in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation

and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work. 55 V., c. 30, s. 3.

Turner vs. East, 7 O. W. N. 377; 32 O. L. R. 375.

Injury to Servant.—Negligence of foreman of works. Findings of Jury. Absence of finding as to what negligence consisted in. Finding by Appellate Court on facts. Judicature Act, R. S. O. 1914, c. 56, s. 27. (2) Workmen's Compensation for Injuries Act, R. S. O. 1914, c. 146 s. 3 (c). Contributory negligence *causa causans*.

Cooney vs. Morel (1914), 45 S. C. R. 458.

Contract of service, expressed or implied must be alleged and shown to have existed, at the time of the accident, between defendant and the party injured or killed in order that the latter may recover compensation under Workmen's Compensation Act, R. S. O. (1909) in any of the cases therein provided for.

Lemberg vs. Wallberg (1914), 26 O. W. R. 390; 60 O. W. N. 298; 7 O. W. N. 100.

Workman Injured.—Action by administrator under Workmen's Compensation Act. Where the evidence showed that a workman was injured while not in his place nor doing the work assigned to him by the contractor and there being no evidence of negligence, Britton J., held that there could be no recovery against the contractor under Workmen's Compensation Act nor against owner.

Turner vs. East (1914), 32 O. L. R. 375; 20 D. L. R. 332.

Superintendent.—The master is liable for personal injuries sustained by the workman by reason of conformity to the negligent order of the superintendent under the Workmen's Compensation for Injuries Act R. S. O. 1914, c. 146, s. 3. but it is not essential that conformity to the order should be the *causa causans* of the injury if it were a *sina qua non*.

4. Employers Individually Liable.—Employers in the industries for the time being included in Schedule 2 shall be liable individually to pay the compensation.

Act 55, Vict., cap. 30.

Miller vs. King, 34 Can. S. C. R. 710.

M., proprietor of iron works, held liable under the act where an engine was overturned and killed a workman. The engine should have been properly braced against the shock of a heavy dray.

Dallontania vs. McCormick and the C. P. R. 8 D. L. R., 757. Ont. High Court, Falconbridge, C. J. K. B.

Under the Workmen's Compensation for Injuries Act, sec. 4, both the immediate employer and owner of the premises on which one is working as an independent contractor are jointly responsible for injuries to a servant of the latter, where it appears that, although the work was being done originally by the independent contractor alone, it later developed that it was impossible to carry out the original agreement and an arrangement was entered into whereby the work was done under their joint supervision, and the accident occurred through the negligence of both the dependent contractor and the owner.

5. Employers Liable to Contribute to the Accident Fund.—Employers in the industries for the time being included in Schedule 1, shall be liable to contribute to the accident fund as hereinafter provided, but shall not be liable individually to pay the compensation.

6. Accident Happening Out of Ontario.—(1) Where an accident happens while the workman is employed elsewhere than in Ontario, which would entitle him or his dependants to compensation under this Part if it had happened in Ontario, the workman or his dependants shall be entitled to compensation under this Part—

- (a) If the place or chief place of business of the employer is situate in Ontario, and the residence and the usual place of employment of the workman are in Ontario, and his employment out of Ontario has lasted less than six months; or
- (b) If the accident happens on a steamboat, ship or vessel, or on a railway, and the workman is a resident of Ontario and the nature of the employment is such that in the course of the work or service which the workman performs it is required to be performed both within and without Ontario.

(2) Except as provided by subsection 1, no compensation shall be payable under this Part where the accident to the workman happens elsewhere than in Ontario.

(3) **Where Employer Individually Liable.**—Compensation payable in respect of an accident happening elsewhere than in Ontario shall, except where the employer has fully contributed to the accident fund in respect of all the wages of workmen in his employ who are engaged in the business or work in which the accident happens, be paid by the employer individually, and the business or work carried on elsewhere than in Ontario by an employer who has not so contributed to the accident fund shall be deemed to be in Schedule 2. (*As amended by s. 2, c. 24, 1915*).

7. Where Compensation Payable by Law of Foreign Country, Workman to Elect.—(1) Where by the law of the country or place in which the accident happens the workman or his dependants are entitled to compensation in respect of it they shall be bound to elect whether they will claim compensation under the law of such country or place or under this Part and to give notice of such election, and if such election is not made and notice given it shall be presumed that they have elected not to claim compensation under this Part.

(2) **How Election to Be Made.**—Notice of the election, where the compensation under this Part is payable by the employer individually, shall be given to the employer, and where the compensation is payable out of the accident fund to the Board and shall be given in both cases within three months after the happening of the accident, or in case it results in death, within three months after the death or within such longer period as either before or after the expiration of such three months the Board may allow.

8. Dependants Not Resident in Ontario.—(1) Where a dependant is not a resident of Ontario he shall not be entitled to compensation unless by the law of the place or country in which he resides the dependants of a workman to whom an accident happens in such place or country if resident in Ontario would be entitled to compensation and where such dependants would be entitled to compensation under such law the compensation to which

the non-resident dependant shall be entitled under this Part shall not be greater than the compensation payable in the like case under that law.

(2) **Exception.**—Notwithstanding the provisions of subsection 1 the Board may award such compensation or sum in lieu of compensation to any such non-resident dependant as may be deemed proper and may pay the same out of the accident fund, or order it to be paid by the employer, as the case may be. (*As amended by s. 3, c. 24, 1915*).

9. Where Workman Entitled to Action Against Person Other Than Employer, Action May Be Brought.—(1) Where an accident happens to a workman in the course of his employment under such circumstances as entitle him or his dependants to an action against some person other than his employer the workman or his dependants if entitled to compensation under this Part may claim such compensation or may bring such action.

(2) **Workman Entitled to Difference Between Compensation Under Act and Amount Collected.**—If an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependants are entitled under this Part the difference between the amount recovered and collected and the amount of such compensation shall be payable as compensation to such workman or his dependants.

(3) **Subrogation of Employer or Board to Rights of Workman.**—If the workman or his dependants elect to claim compensation under this Part the employer, if he is individually liable to pay it, and the Board if the compensation is payable out of the accident fund shall be subrogated to the rights of the workman or his dependants and may maintain an action in his or their names against the person against whom the action lies and any sum recovered from him by the Board shall form part of the accident fund.

(4) **How Election to Be Made.**—The election shall be made and notice of it shall be given within the time and in the manner provided by section 7.

(5) **No Right of Action as Between Persons in Schedule 1.**—This section shall not give any right to an employer in Schedule 1, or to a workman of an employer in Schedule 1, to bring an action against any employer in Schedule 1, but in any case where it appears to the satisfaction of the Board that a workman of an employer in any class in Schedule 1 is injured or killed owing to the negligence of an employer or the workman of an employer in another class in Schedule 1, the Board may direct that the compensation awarded in any such case shall be charged against the class to which such last mentioned employer belongs. (*Added by s. 4, c. 24, 1915*).

10. Principals and Contractors.—(1) Where the compensation is payable by the employer individually and a person, in this section referred to as the principal, in the course of or for the purposes of his trade or business contracts with any other person, in this section referred to as the contractor, for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work the compensation which he would have been liable to pay if that workman had been immediately employed by him.

(2) Subsection 1 shall not apply where the accident happens elsewhere than on or in or about the premises upon which the principal has undertaken to execute the work or which are otherwise under his control or management. (*As amended by s. 5, c. 24, 1915*).

(3) **Liability of Principal to Pay Assessments.**—Where a person, whether carrying on an industry included in Schedule 1 or not, in this section referred to as the principal, contracts with any other person, in this section referred to as the contractor, for the execution by or under the contractor of the whole or any part of any work for the principal, it shall be the duty of the principal to see that any sum which the contractor or any sub-contractor is liable to contribute to the accident fund is paid, and if any such principal to the accident fund is paid, and if any such principal fails to do so he shall be personally liable to pay it to the Board, and the Board shall have the like powers and be entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment. (*Added by s. 5, c. 24, 1915*).

(4) Where compensation or contribution to the accident fund is claimed from the principal, in this part reference to the principal shall be substituted for reference to the employer, except that the amount of compensation or contribution shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed. (*As amended by s. 5, c. 24, 1915*).

(5) **Right of Indemnity.**—Where the principal is liable to pay compensation or contribute to the accident fund under this section he shall be entitled to be indemnified by any person who should have paid the same, and all questions as to the right to and the amount of any such indemnity shall be determined by the Board. (*As amended by s. 5, c. 24, 1915*).

(6) Nothing in this section shall prevent a workman claiming compensation or the Board collecting contribution to the accident fund from the contractor or any sub-contractor instead of the principal. (*As amended by s. 5, c. 24, 1915*).

11. Member of Family of Employer Employed as Workman.—Where compensation is payable out of the accident fund, a member of the family of an employer, or the dependants of such member, shall not be entitled to compensation unless such member was at the time of the accident carried on the pay roll of the employer and his wages were included in the then last statement furnished to the Board under section 78 nor for the purpose of determining the compensation shall his earnings be taken to be more than the amount of his wages, as shown by such pay roll and statement. (*As amended by s. 6, c. 24, 1915*).

12. Where Employer Carried on Pay Roll He and Dependants Entitled to Compensation.—Where compensation is payable out of the accident fund and an employer carries himself on his pay roll at a salary or wage which the Board deems reasonable, but not exceeding the rate of \$2,000 per annum, and includes such salary or wages in his then last statement furnished to the Board under section 78, such employer shall be deemed to be a workman within the meaning of this Act, and he or his dependants shall be entitled to compensation accordingly, but for the purpose of determining

the compensation his earnings shall not be taken to be more than the amount of his salary or wages as shown by such pay roll and statement. (*As amended by s. 7, c. 24, 1915*).

13. No Action to Be Brought to Recover Compensation.—No action shall lie for the recovery of the compensation whether it is payable by the employer individually or out of the accident fund, but all claims for compensation shall be heard and determined by the Board.

14. Workman Entitled to Compensation Residing Out of Ontario.—If a workman receiving a weekly or other periodical payment ceases to reside in Ontario he shall not thereafter be entitled to receive any such payment unless a medical referee certifies that the disability resulting from the injury is likely to be of a permanent nature and if a medical referee so certifies and the Board so directs the workman shall be entitled quarterly to the amount of the weekly or other periodical payments accruing due if he proves in such manner as may be prescribed by the Regulations his identity and the continuance of the disability in respect of which the same is payable.

15. Provisions of Act in Lieu of All Rights of Action Against Employer.—(1) The provisions of this Part shall be in lieu of all rights and rights of action, statutory or otherwise, to which a workman or his dependants are or may be entitled against the employer of such workman for or by reason of any accident happening to him on or after the first day of January, 1915, while in the employment of such employer, and no action in respect thereof shall lie.

(2) Any party to an action may apply to the Board for adjudication and determination of the question of the plaintiff's right to compensation under this Part, or as to whether the action is one the right to bring which is taken away by this Part, and such adjudication and determination shall be final and conclusive. (*As amended by s. 8, c. 24, 1915*).

16. Right to Compensation May Not Be Waived.—It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependants are or may become entitled under this Part and every agreement to that end shall be absolutely void.

17. Agreement as to Compensation Not Valid Unless Approved by the Board.—(1) Where the compensation is payable by an employer individually no agreement between a workman or dependant and the employer for fixing the amount of the compensation or by which the workman or dependant accepts or agrees to accept a stipulated sum in lieu or in satisfaction of it shall be binding on the workman or dependant unless it is approved by the Board.

(2) **Exceptions.** Subsection 1 shall not apply to compensation for temporary disability lasting for less than four weeks, but in such cases the Board may, on the application of the workman or dependant, or of its own motion, set aside the agreement on such terms as may be deemed just. (*As amended by s. 9, c. 24, 1915*).

(3) Nothing in this section shall be deemed to authorize the making of any such agreement except with respect to an accident

that has happened and the compensation to which the workman or dependant has become entitled because of it.

18. Deduction Not to Be Made from Wages.—(1) It shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of any of his workmen any part of any sum which the employer is or may become liable to pay to the workman as compensation under this Part or to require or to permit any of his workmen to contribute in any manner towards indemnifying the employer against any liability which he has incurred or may incur under this Part.

(2) **Penalty.**—Every person who contravenes any of the provisions of subsection 1 shall for every such contravention incur a penalty not exceeding \$50 and shall also be liable to repay to the workman any sum which has been so deducted from his wages or which he has been required or permitted to pay in contravention of subsection 1.

19. Compensation Not Assignable or Liable to Attachment.—Unless with the approval of the Board no sum payable as compensation or by way of commutation of any weekly or other periodical payment in respect of it shall be capable of being assigned, charged or attached, nor shall it pass by operation of law except to a personal representative nor shall any claim be set off against it.

20.—Notice of Accident to Be Given.—(1) Subject to subsection 5 compensation shall not be payable unless notice of the accident is given as soon as practicable after the happening of it and before the workman has voluntarily left the employment in which he was injured and unless the claim for compensation is made within six months from the happening of the accident or in case of death within six months from the time of death.

(2) **Nature of Notice.**—The notice shall give the name and address of the workman and shall be sufficient if it states in ordinary language the cause of the injury and where the accident happened.

(3) **Service of Notice.**—The notice may be served by delivering it at or sending it by registered post addressed to the place of business or the residence of the employer, or where the employer is a body of persons, corporate or unincorporate, by delivering it at or sending it by registered post addressed to the employer at the office or if there are more offices than one at any of the offices of such body of persons.

(4) **Notice to Board.**—Where the compensation is payable out of the accident fund the notice shall also be given to the Board by delivering it to or at the office of the Secretary or by sending it to him by registered post addressed to his office.

(5) **Failure to Give, or Defect in Notice Not to Affect Right to Compensation in Certain Cases.**—Failure to give the prescribed notice or any defect or inaccuracy in a notice shall not bar the right to compensation if in the opinion of the Board the employer was not prejudiced thereby or where the compensation is payable out of the accident fund if the Board is of opinion that the claim for compensation is a just one and ought to be allowed.

21. Workman to Submit to Examination.—(1) A workman who claims compensation, or to whom compensation is payable under this Part, shall if so required by his employer submit himself for examination by a duly qualified medical practitioner provided and paid for by the employer, and shall if so required by the Board submit himself for examination by a medical referee.

(2) **In Accordance with Regulations.**—A workman shall not be required at the request of his employer to submit himself for examination otherwise than in accordance with the Regulations.

22. In Case of Difference Between Medical Examiners, etc., Reference May Be Made to Medical Referee.—(1) Where a workman has upon the request of his employer submitted himself for examination, or has been examined by a duly qualified medical practitioner selected by himself, and a copy of the report of the medical practitioner as to the workman's condition has been furnished in the former case by the employer to the workman and in the latter case by the workman to the employer the Board may, on the application of either of them, refer the matter to a medical referee.

(2) **Certificate of Medical Referee When Final.**—The medical referee to whom a reference is made under the next preceding subsection or who has examined the workman by the direction of the Board under subsection 1 of section 21, shall certify to the Board as to the condition of the workman and his fitness for employment, specifying where necessary the kind of employment, and if unfit, the cause of such unfitness, and his certificate unless the Board otherwise directs shall be conclusive as to the matters certified. (*As amended by s. 10, c. 24, 1915*).

(3) **Failure to Submit to Examination or Obstructing It.**—If a workman does not submit himself for examination when required to do so as provided by subsection 1 of section 21, or on being required to do so does not submit himself for examination to a medical referee under that subsection or under subsection 1 of this section, or in any way obstructs any examination, his right to compensation or if he is in receipt of a weekly or other periodical payment his right to it shall be suspended until such examination has taken place.

22a. Special Medical Treatment in Certain Cases.—Where in any case, in the opinion of the Board, it will be in the interest of the accident fund to provide a special surgical operation or other special medical treatment for a workman, and the furnishing of the same by the Board is, in the opinion of the Board, the only means of avoiding heavy payment for permanent disability, the expense of such operation or treatment may be paid out of the accident fund. (*Added by s. 11, c. 24, 1915*).

23. Review of Compensation.—Any weekly or other periodical payment to a workman may be reviewed at the request of the employer or of the workman, if the compensation is payable by the employer individually, or, if the compensation is payable out of the accident fund, of the Board's own motion or at the request of the workman and on such review the Board may put an end to or diminish or may increase such payment to a sum not beyond the maximum hereinafter prescribed.

24. Increase of Compensation to Workmen Under 21.—Where the workman was at the date of the accident under twenty-one years of age and the review takes place more than six months after the accident the amount of a weekly payment may be increased to the sum to which he would have been entitled if his average earnings had at the date of the accident been equal to what if he had not been injured he would probably have been earning at the date of the review.

25. Commutation of Payments for Lump Sum.—(1) Where the compensation is payable by an employer individually, the employer may, with the consent of the workman or dependant to whom it is payable and with the approval of the Board, but not otherwise, and where it is payable out of the accident fund, the Board may commute the weekly or other periodical payments payable to a workman or a dependant for a lump sum.

(2) **Lump Sum to Be Paid to Board.**—Where the lump sum is payable by the employer individually it shall be paid to the Board.

(3) **Application of Lump Sum.**—The lump sum may be:—

- (a) Applied in such manner as the workman or dependant may direct;
- (b) paid to the workman or dependant;
- (c) invested by the Board and applied from time to time as the Board may deem most for the advantage of the workman or dependant;
- (d) paid to trustees to be used and employed upon and subject to such trusts and for the benefit of such persons as, in case it is payable by the employer individually, the workman or dependant directs and the Board approves, or, if payable out of the accident fund, as may be desired by the workman or dependant and approved by the Board;
- (e) applied partly in one and partly in another or others of the modes mentioned in clauses (a), (b), (c) and (d), as the Board may determine.

(4) Where the compensation is payable out of the accident fund, the Board may in any case where in its opinion the interest or pressing need of the workman or dependant warrants it, advance or pay to or for the workman or dependant such lump sum as the circumstances warrant and as the Board may determine. (*Added by s. 32, c. 24, 1915*).

26. Commutation of Weekly Payments.—(1) Where a weekly or other periodical payment is payable by the employer individually and has been continued for not less than six months, the Board may on the application of the employer allow the liability therefor, to be commuted by the payment of a lump sum of such an amount as, if the disability is permanent, would purchase an immediate annuity from a life insurance company approved by the Board, equal to seventy-five per cent. of the annual value of the weekly or other periodical payments, and in other cases of such an amount as the Board may deem reasonable.

(2) **Application of Lump Sum.**—The sum for which a payment is commuted under subsection 1 shall be paid to the Board and shall be dealt with in the manner provided by section 25.

27. Insurance Company Required to Commute Weekly or Other Periodical Payment.—(1) Where an employer insured by a contract of insurance of an insurance company or any other underwriter is individually liable to make a weekly or other periodical payment to a workman or his dependants and the payment has continued for more than six months the liability shall, if the Board so directs before the expiration of twelve months from the commencement of the disability of the workman or his death, if the accident resulted in death, be commuted by the payment of a lump sum in accordance with the next preceding section, and the company or underwriter shall pay the lump sum to the Board, and it shall be dealt with in the manner provided by section 25.

(2) This section shall not apply to a contract of insurance entered into before the passing of this Act.

28. Board May Require Employer to Pay Sum Sufficient to Commute.—The Board may require an employer who is individually liable to pay the compensation to pay to the Board a sum sufficient to commute in accordance with section 26, any weekly or other periodical payments which are payable by the employer and such sum shall be applied by the Board in the payment of such weekly or other periodical payments as they from time to time become payable, but if the sum paid to the Board is insufficient to meet the whole of such weekly or other periodical payments the employer shall nevertheless be liable to make such of them as fall due after the sum paid to the Board is exhausted, and if the sum paid is more than sufficient for that purpose the excess shall be returned to the employer when the right to compensation comes to an end. (*As amended by s. 12, c. 24, 1915*).

29. Board May Require Employer to Insure His Workmen.—The Board may require an employer who is individually liable to pay the compensation to insure his workmen and keep them insured against accidents in respect of which he may become liable to pay compensation in a company approved by the Board for such amount as the Board may direct, and in default of his doing so the Board may cause them to be so insured and may recover the expense incurred in so doing from the employer in the same way as payment of assessments may be enforced. (*As amended by s. 13, c. 24, 1915*).

30. Where Employer Insured Board May Require Insurer to Pay Amount Payable to Employer Directly to Board.—(1) Where an employer who is individually liable to pay the compensation is insured against his liability to pay compensation, the Board may require the insurance company or other underwriter to pay the sum which under the contract of insurance such company or underwriter would be liable to pay to the employer in respect of an accident to a workman who becomes, or whose dependants become, entitled to compensation under this Part, directly to the Board in discharge or in discharge *pro tanto* of the compensation to which such workman or his dependants are found to be entitled.

(2) **Notice to Be Given to Insurer.**—In any case to which subsection 1 applies where a claim for compensation is made notice of the claim shall be given to the insurance company or other underwriter and to the employer, and the Board shall determine not only the question of the right of the workman or dependant

to compensation but also the question whether the whole or any part of it should be paid directly by the insurance company or other underwriter as provided by subsection 1.

(3) **Sec. 25 to Apply.**—Section 25 shall apply to the compensation payable to the Board under subsection 1.

31. In Case of Permanent Disability Employer May Be Required to Pay Capital Sum.—(1) Where the accident causes permanent disability, either total or partial, or the death of the workman and the compensation is payable by the employer individually the Board may require the employer to pay to the Board such sum as in its opinion will be sufficient with the interest thereon if invested so as to earn interest at the rate of 5 per cent. per annum to meet the future payments to be made to the workman or his dependants, and such sum when paid to the Board shall be invested by it and shall form a fund to meet such future payments.

(2) **Or to Give Security for Payment of Compensation.**—The Board, instead of requiring the employer to make the payment provided for by subsection 1. may require him to give such security as the Board may deem sufficient for the future payments.

32. Compensation Not Payable During Suspension.—Where a right to compensation is suspended under the provisions of this Part no compensation shall be payable in respect of the period of suspension.

SCALE OF COMPENSATION.

33. Compensation in Case of Death.—(1) Where death results from an injury the amount of the compensation shall be:—

- (a) The necessary expenses of the burial of the workman not exceeding \$75;
- (b) Where the widow or an invalid husband is the sole dependant, a monthly payment of \$20;
- (c) Where the dependants are a widow or an invalid husband and one or more children, a monthly payment of \$20, with an additional monthly payment of \$5 for each child under the age of 16 years, not exceeding in the whole \$40;
- (d) Where the dependants are children, a monthly payment of \$10 to each child under the age of 16 years, not exceeding in the whole \$40;
- (e) Where the dependants are persons other than those mentioned in the foregoing clauses, a sum reasonable and proportionate to the pecuniary loss to such dependants occasioned by the death, to be determined by the Board, but not exceeding to the parents or parent \$20 per month, and not exceeding in the whole \$30 per month. (*As amended by s. 14 (a). c. 24, 1915.*)

(2) **Duration of Payments Under Clause (f) of Subsection 1.**—In the case provided for by clause (e) of subsection 1, the payments shall continue only so long as in the opinion of the Board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependants. (*As amended by s. 14 (b). c. 24, 1915.*)

(3) **Compensation to Dependants.**—Where there are both total and partial dependants the compensation may be allotted partly to the total and partly to the partial dependants.

(4) **Board May Apply Payment for Benefit of Children.**—Where the Board is of opinion that for any reason it is necessary or desirable that a payment in respect of a child should not be made directly to its parent, the Board may direct that the payment be made to such person or be applied in such manner as the Board may deem most for the advantage of the child.

(5) **Compensation Not to Exceed Percentage of Wages in Certain Cases.**—Exclusive of the expenses of burial of the workman, the compensation payable as provided by subsection 1 shall not in any case exceed 55 per cent. of the average monthly earnings of the workman mentioned in section 37, and if the compensation payable under that subsection would in any case exceed that percentage it shall be reduced accordingly, and where several persons are entitled to monthly payments the payments shall be reduced proportionately. (*As amended by s. 14 (c), c. 24, 1915*).

34. Marriage of Widow.—(1) If a dependant widow marries the monthly payments to her shall cease, but she shall be entitled in lieu of them to a lump sum equal to the monthly payments for two years and such lump sum shall be payable within one month after the day of her marriage.

(2) **Exception.**—Subsection 1 shall not apply to payments to a widow in respect of a child.

35. When Payments to Child to Cease.—A monthly payment in respect of a child shall cease when the child attains the age of 16 years or dies.

36. Expense of Medical Attendance Where No Dependants.—Where a workman leaves no dependants such sum as the Board may deem reasonable for the expenses of his medical attendance, nursing, care and maintenance and of his burial shall be paid to the persons to whom such expenses are due. (*As amended by s. 15, c. 24, 1915*).

37. Compensation in Case of Permanent Total Disability.—Where permanent total disability results from the injury the amount of the compensation shall be a weekly payment during the life of the workman equal to 55 per cent. of his average weekly earnings during the previous twelve months if he has been so long employed, but if not then for any less period during which he has been in the employment of his employer.

38. Permanent Partial Disability.—(1) Where permanent partial disability results from the injury the compensation shall be a weekly payment of 55 per cent. of the difference between the average weekly earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident and the compensation shall be payable and continue during the lifetime of the workman.

(2) **Payment of Lump Sum.**—Where the impairment of the earning capacity of the workman does not exceed 10 per cent. of his earning capacity instead of such weekly payment the Board shall, unless in the opinion of the Board it would not be to the advantage of the workman to do so, direct that such lump sum

as may be deemed to be the equivalent of it shall be paid to the workman.

39. Temporary Total Disability.—Where temporary total disability results from the injury the compensation shall be the same as that prescribed by section 37, but shall be payable only so long as the disability lasts.

40. Temporary Partial Disability.—Where temporary partial disability results from the injury the compensation shall be the same as that prescribed by section 38, but shall be payable only so long as the disability lasts and subsection 2 of that section shall apply.

41. How Average Earnings to Be Computed.—(1) Average earnings shall be computed in such a manner as is best calculated to give the rate per week or month at which the workman was remunerated but not so as in any case to exceed the rate of \$2,000 per annum.

(2) **In Case of Shortness of Service or Its Casual Nature.**—Where owing to the shortness of the time during which the workman was in the employment of his employer or the casual nature of his employment or the terms of it, it is impracticable to compute the rate of remuneration as of the date of the accident regard may be had to the average weekly or monthly amount which during the twelve months previous to the accident was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed then by a person in the same grade employed in the same class of employment and in the same locality.

(3) **Where Two or More Employers.**—Where the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one of them and at another time for another of them his average earnings shall be computed on the basis of what he would probably have been earning if he had been employed solely in the employment of the employer for whom he was working at the time of the accident.

(4) **Meaning of Employment by Same Employer Concurrently.**—Employment by the same employer shall mean employment by the same employer in the grade in which the workman was employed at the time of the accident uninterrupted by absence from work due to illness or any other unavoidable cause.

(5) **Special Expenses Not to Be Included.**—Where the employer was accustomed to pay the workman a sum to cover any special expenses entailed on him by the nature of his employment that sum shall not be reckoned as part of his earnings.

(6) Where in any case it seems more equitable, the Board may award compensation, having regard to the earnings of the workman at the time of the accident. (*Added by s. 16, c. 24, 1915*).

42. Matters to Be Considered in Fixing Payments.—(1) In fixing the amount of a weekly or monthly payment regard shall be had to any payment, allowance or benefit which the workman may receive from his employer during the period of his disability, including any pension, gratuity or other allowance provided wholly at the expense of the employer.

(2) Where the compensation is payable out of the accident fund any sum deducted from the compensation under subsection 1 may be paid to the employer out of the accident fund.

43. Provision for Fortnightly or Monthly Payments.—The Board may wherever it is deemed advisable provide that the payments of compensation may be fortnightly or monthly instead of weekly, or where the workman or dependant is not a resident of Ontario or ceases to reside therein may otherwise fix the periods of payment or commute the compensation as the Board may deem proper. (*As amended by s. 17, c. 24, 1915*).

44. Payments in Case of Infant.—Where a workman or a dependant is an infant under the age of 21 years or under any other legal disability the compensation to which he is entitled may be paid to such person or be applied in such manner as the Board may deem most for his advantage.

THE WORKMEN'S COMPENSATION BOARD.

45. Workmen's Compensation Board, How Constituted.—There is hereby constituted a Commission for the administration of this Part to be called "The Workmen's Compensation Board," which shall consist of three members to be appointed by the Lieutenant-Governor in Council and shall be a body corporate. (*As amended by s. 18, c. 24, 1915*).

46. Chairman.—(1) One of the Commissioners shall be appointed by the Lieutenant-Governor in Council to be the Chairman of the Board and he shall hold that office while he remains a member of the Board and another of the Commissioners shall be appointed by the Lieutenant-Governor in Council Vice-Chairman of the Board.

(2) **When Vice-Chairman May Act.**—In the absence of the Chairman or in case of his inability to act or if there is a vacancy in the office, the Vice-Chairman may act as and shall have all the powers of the Chairman.

47. Appointment of Commissioner Pro Tempore.—(1) In the case of the death, illness or absence from Ontario of a Commissioner or of his inability to act from any cause the Lieutenant-Governor in Council may appoint some person to act *pro tempore* in his stead and the person so appointed shall have all the powers and perform all the duties of a Commissioner.

(2) Subsection 1 shall apply in the case of the Chairman of the Board as well as in the case of any other member of it.

48. Presumption Where Vice-Chairman Has Acted.—Where the Vice-Chairman appears to have acted for or instead of the Chairman it shall be conclusively presumed that he so acted for one of the reasons mentioned in the next preceding subsection.

49. Tenure of Office of Commissioners.—Each Commissioner shall, subject to section 50, hold office during good behaviour but may be removed at any time for cause.

50. Age Limit.—Unless otherwise directed by the Lieutenant-Governor in Council a Commissioner shall cease to hold office when he attains the age of 75 years.

51. Commissioners to Give Whole Time to Duties.—Each of the Commissioners shall devote the whole of his time to the performance of his duties under this Part.

52. Salaries.—The salary of the Chairman shall be \$10,000 per annum, the salary of the Vice-Chairman shall be \$8,500 per annum, and the salary of the other Commissioner shall be \$7,500 per annum, and such salaries shall be payable out of the Consolidated Revenue Fund.

53. Quorum.—The presence of two Commissioners shall be necessary to constitute a quorum of the Board.

54. Vacancy Not to Impair Authority if Two Members Remain.—A vacancy in the Board shall not if there remain two members of it impair the authority of such two members to act.

55. Powers of Board.—The Board shall have the like powers as the Supreme Court for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents and things.

56. Commissioners to Be Disqualified in Certain Cases.—(1) A Commissioner shall not directly or indirectly:—

- (a) have, purchase, take or become interested in any industry, to which this Part applies or any bond, debenture or other security of the person owning or carrying it on;
- (b) be the holder of shares, bonds, debentures or other securities of any company which carries on the business of employers' liability or accident insurance;
- (c) have any interest in any device, machine, appliance, patented process or article which may be required or used for the prevention of accidents.

(2) If any such industry, or interest therein, or any such share, bond, debenture, security, or thing comes to or becomes vested in a Commissioner by will or by operation of law and he does not within three months thereafter sell and absolutely dispose of it he shall cease to hold office.

57. Offices of Board and Sittings.—The offices of the Board shall be situated in the city of Toronto and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, and in that case sittings may be held in any part of Ontario.

58. Proceedings of Board.—The Commissioners shall sit at such times and conduct their proceedings in such manner as they may deem most convenient for the proper discharge and speedy despatch of business.

59. Appointment of Secretary and Officers.—(1) The Board shall appoint a Secretary and a Chief Medical Officer and may appoint such auditors, actuaries, accountants, inspectors, medical referees, other officers, clerks and servants as the Board may deem necessary for carrying out the provisions of this Part and may prescribe their duties and, subject to the approval of the Lieutenant-Governor in Council, may fix their salaries. (*As amended by s. 19, c. 24, 1915*).

Every person so appointed shall hold office during the pleasure of the Board.

60. (1) The Board shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and as to any matter or thing in respect to which any power, authority or discretion is conferred upon the Board, and the action or decision of the Board thereon shall be final and conclusive and shall not be open to question or review in any court and no proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by *certiorari* or otherwise into any court.

(2) Without thereby limiting the generality of the provisions of subsection 1, it is declared that such exclusive jurisdiction shall extend to determining:

- (a) Whether any industry or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 1, and if so which of them;
- (b) Whether any industry or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 2, and if so which of them;
- (c) Whether any part of any such industry constitutes a part, branch or department of an industry within the meaning of Part I.

(3) **Power to Reconsider.**—Nothing in subsection 1 shall prevent the Board from reconsidering any matter which has been dealt with by it or from rescinding, altering or amending any decision or order previously made, all which the Board shall have authority to do.

61. Power of Board as to Awarding Compensation for Expenses.—The Board may award such sum as it may deem reasonable to the successful party to a contested claim for compensation or to any other contested matter as compensation for the expenses he has been put to by reason of or incidental to the contest and an order of the Board for the payment by an employer of any sum so awarded when filed in the manner provided by section 63 shall become a judgment of the Court in which it is filed and may be enforced accordingly.

62. Board May Act on Report of Officers.—(1) The Board may act upon the report of any of its officers and any inquiry which it shall be deemed necessary to make may be made by any one of the Commissioners or by an officer of the Board or some other person appointed to make the inquiry, and the Board may act upon his report as to the result of the inquiry.

(2) The person appointed to make the inquiry shall for the purposes of the inquiry have all the powers conferred upon the Board by section 55.

63. Enforcement of Orders of Board.—An order of the Board for the payment of compensation by an employer who is individually liable to pay the compensation or any other order of the Board for the payment of money made under the authority of this Part, or a copy of any such order certified by the Secretary to be a true copy

may be filed with the clerk of any county or district court and when so filed shall become an order of that court and may be enforced as a judgment of the court.

64. Regulations.—(1) The Board may make such Regulations as may be deemed expedient for carrying out the provisions of this Part and to meet cases not specially provided for by this Part, and a certified copy of every Regulation so made shall be transmitted forthwith to the Provincial Secretary and any Regulation may within one month after it has been received by the Provincial Secretary be disallowed by the Lieutenant-Governor in Council.

(2) **Publication.**—Every Regulation which is approved by the Lieutenant-Governor in Council shall immediately after approval or on the day named by him for that purpose become effective, and after the period for disallowance has expired every other Regulation which has not been disallowed shall become effective and every Regulation which has become effective shall be forthwith published in the *Ontario Gazette*.

(3) **Penalty.**—Every person who contravenes any such Regulation after it has become effective or any rule of an association formed as provided by section 101, which has been approved and ratified as provided by that section shall for every contravention incur a penalty not exceeding \$50.

(4) **Determination of Workman's Right to Bring Action.**—Where an action in respect of an injury is brought against an employer by a workman or a dependant the Board shall have jurisdiction upon the application of the employer to determine whether the workman or dependant is entitled to maintain the action or only to compensation under Part I, and if the Board determines that the only right of the workman or dependant is to such compensation the action shall be forever stayed.

65. Audit of Accounts.—The accounts of the Board shall be audited by the Provincial Auditor or by an auditor appointed by Lieutenant-Governor in Council for that purpose and the salary or remuneration of the last mentioned auditor shall be paid by the Board.

66. Report to Lieutenant-Governor.—(1) The Board shall on or before the 15th day of January in each year make a report to the Lieutenant-Governor of its transactions during the next preceding calendar year and such report shall contain such particulars as the Lieutenant-Governor in Council may prescribe.

(2) **Report to Be Laid Before Assembly.**—Every such report shall be forthwith laid before the Assembly if the Assembly is then in session and if it is not then in session within fifteen days after the opening of the next session.

67. Superintendent of Insurance to Examine Into Affairs and Business of Board.—The Superintendent of Insurance or an officer of his Department named by him for that purpose shall once in each year and oftener if so required by the Lieutenant-Governor in Council examine into the affairs and business of the Board for the purpose of determining as to the sufficiency of the accident fund and shall report thereon to the Lieutenant-Governor in Council.

CONTRIBUTIONS BY THE PROVINCE.

68. Provincial Grant Towards Costs of Administration.—To assist in defraying the expenses incurred in the administration of this Part there shall be paid to the Board out of the Consolidated Revenue Fund such annual sum not exceeding \$100,000 as the Lieutenant-Governor in Council may direct.

ACCIDENT FUND.

69. How Accident Fund to Be Provided.—(1) An accident fund shall be provided by contributions to be made in the manner hereinafter provided, by the employers in the classes or groups of industries, for the time being included in Schedule 1, and compensation payable in respect of accidents which happen in any industry included in any of such classes or groups, shall be payable and shall be paid out of the accident fund.

(2) **Industries in Schedule 2 Not to Contribute.**—Notwithstanding the generality of the description of the classes for the time being included in Schedule 1 none of the industries included in Schedule 2 shall form part of or be deemed to be included in any of such classes, unless it is added to Schedule 1 by the Board under the authority conferred by this Part.

70. Payment of Compensation Out of Reserves or Consolidated Revenue Fund.—Where at any time there is not money available for payment of the compensation which has become due, without resorting to the reserves the Board may pay such compensation out of the reserves and shall make good the amount withdrawn from the reserves by making a special assessment upon the employers liable to provide the compensation or by including it in a subsequent annual assessment, or where it is for any reason deemed inexpedient to withdraw the amount required from the reserves the Lieutenant-Governor in Council may direct that the same be advanced out of the Consolidated Revenue Fund and in that case the amount advanced shall be collected by a special assessment and when collected shall be paid over to the Treasurer of Ontario.

71. Sufficiency of Accident Fund to Be maintained.—It shall be the duty of the Board at all times to maintain the accident fund so that with the reserves, exclusive of the special reserve, it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened.

72. Reserve Funds.—(1) Subject to section 91 it shall not be obligatory upon the Board to provide and maintain a reserve fund which shall at all times be equal to the capitalized value of the payments of compensation which will become due in future years unless the Board shall be of opinion that it is necessary to do so in order to comply with the provisions of section 71.

(2) It shall not be necessary that the reserve fund shall be uniform as to all classes but subject to sections 71 and 91 it shall be discretionary with the Board to provide for a larger reserve fund in one or more of the classes than in another or others of them.

73. Industries Not Specifically Included in Classes.—If any trade or business connected with the industries of:—

Lumbering, mining, quarrying, fishing, manufacturing, building, construction, engineering, transportation, operation of electric power lines, waterworks and other public utilities, navigation, operation of boats, ships, tugs and dredges, operation of grain elevators and warehouses; teaming, scavenging and street cleaning; painting, decorating and renovating, dyeing and cleaning;

or any occupation incidental thereto or immediately connected therewith, not included in Schedule 2, is not included in any of the classes mentioned in Schedule 1, the Board shall assign it to an appropriate class or form an additional class or classes embracing the trades or businesses not so included, and until that is done except in so far as it may be otherwise provided by the Regulations such trades and businesses shall together constitute a separate group or class and shall be deemed to be included in Schedule 1.

74. Jurisdiction of Board.—(1) The Board shall have jurisdiction and authority to:—

- (a) **As to Re-arrangement of Classes.**—Re-arrange any of the classes for the time being included in Schedule 1, and withdraw from any class any industry included in it and transfer it wholly or partly to any other class or form it into a separate class, or exclude it from the operation of Part I;
- (b) **Establishing Other Classes.**—Establish other classes including any of the industries which are for the time being included in Schedule 2, or are not included in any of the classes in Schedule 1;
- (c) **Adding to Classes.**—Add to any of the classes for the time being included in Schedule 1, any industry which is not included in any of such classes.

(2) **Apportionment of Burden of Assessment According to Hazard of Business, etc.**—Where in the opinion of the Board the hazard to workmen in any of the industries embraced in a class is less than that in another or others of such industries, or where for any other reason it is deemed proper to do so, the Board may sub-divide the class into sub-classes and if that is done the Board shall fix the percentages or proportions of the contributions to the accident fund which are to be payable by the employers in each sub-class.

(3) **Separate Accounts to Be Kept for Each Class and Sub-class.**—Separate accounts shall be kept of the amounts collected and expended in respect of every class and sub-class, but for the purpose of paying compensation the accident fund shall, nevertheless, be deemed one and indivisible.

(4) **Varying Amounts of Assessment in Certain Cases.**—Where a greater number of accidents has happened in any industry than in the opinion of the Board ought to have happened if proper precautions had been taken for the prevention of accidents in it, or where in the opinion of the Board the ways, works, machinery or appliances in any industry are defective, inadequate or insufficient the Board may so long as such condition in its opinion con-

tinues to exist add to the amount of any contribution to the accident fund for which an employer is liable in respect of such industry such a percentage thereof as the Board may deem just and may exclude such industry from the class in which it is included, and if it is so excluded the employer shall be individually liable to pay the compensation to which any of his workmen or their dependants may thereafter become entitled and such industry shall be included in Schedule 2.

(5) **Collection and Application of Additional Percentage.**—Any additional percentage levied and collected under the next preceding subsection shall be added to the accident fund or applied in reduction of the assessment upon the other employers in the class or sub-class to which the employer from whom it is collected belongs as the Board may determine.

75. Withdrawing Small Industries from Classes.—(1) The Board may in the exercise of the powers conferred by the next preceding section withdraw or exclude from a class industries in which not more than a stated number of workmen are usually employed and may afterwards add them to the class or classes from which they have been withdrawn, and any industry so withdrawn or excluded shall not thereafter be deemed to be included in Schedule 1 or Schedule 2.

(2) **Employers in Industries Withdrawn Under s.s. 1 May Elect to Become Members of Class.**—Where industries are withdrawn or excluded from a class under the authority of subsection 1, an employer in any of them may, nevertheless elect to become a member of the class to which but for the withdrawal or exclusion he would have belonged, and if he so elects he shall be a member of that class and as such liable to contribute to the accident fund, and his industry shall be deemed to be embraced in Schedule 1.

(3) **Notice of Election.**—Notice of the election shall be given to the Secretary of the Board and the election shall be deemed to have been made when the notice is received by him.

76. Powers May Be Exercised as Occasion Requires.—The powers conferred by the next preceding two sections may be exercised from time to time and as often as in the opinion of the Board occasion may require.

77. When Regulations Become Effective.—A Regulation or order made by the Board under the authority of clause (a) or clause (b) of subsection 1 of section 74, shall not have any force or effect unless approved by the Lieutenant-Governor in Council, and when so approved it shall be published in the *Ontario Gazette* and shall take effect on the expiration of one month from the first publication of it in the *Ontario Gazette*.

STATEMENTS TO BE FURNISHED BY EMPLOYERS.

78. Statements to Be Furnished by Employers.—(1) Subject to the Regulations every employer shall not later than three months before the day named by proclamation as mentioned in section 3 and yearly thereafter on or before such date as shall be prescribed by the Board and at such other time or times as it may by order or regulation of the Board be required, prepare and transmit to the Board a statement of the amount of the wages earned by all his employees during the year then last past, or any

part thereof specified by the Board, and of the amount which he estimates he will expend for wages during the then current year or any part thereof specified by the Board, and such additional information as the Board may require, both verified by the statutory declaration of the employer or the manager of the business, or where the employer is a corporation by an officer of the corporation having a personal knowledge of the matters to which the declaration relates. (*As amended by s. 20, c. 24, 1915*).

(2) **Separate Statements as to Branches, etc.**—Where the business of the employer embraces more than one branch of business or class of industry the Board may require separate statements to be made as to each branch or class of industry, and such statements shall be made, verified, and transmitted as provided by subsection 1.

(3) **Failure to Furnish Statements.**—If any employer does not make and transmit to the Board the prescribed statement within the prescribed time the Board may base any assessment or supplementary assessment thereafter made upon him on such sum as in its opinion is the probable amount of the pay roll of the employer and the employer shall be bound thereby, but if it is afterwards ascertained that such amount is less than the actual amount of the pay roll the employer shall be liable to pay to the Board the difference between the amount for which he was assessed and the amount for which he would have been assessed on the basis of his pay roll.

(4) **Penalty.**—If an employer does not comply with the provisions of subsection 1 or subsection 2, or if any statement made in pursuance of their provisions is not a true and accurate statement of any of the matters required to be set forth in it the employer for every such non-compliance and for every such statement shall incur a penalty not exceeding \$500.

79. Examination of Accounts and Books of Employer.—(1) The Board and any member of it, and any officer or person authorized by it for that purpose shall have the right to examine the books and accounts of the employer and to make such other enquiry as the Board may deem necessary for the purpose of ascertaining whether any statement furnished to the Board under the provisions of section 78 is an accurate statement of the matters which are required to be stated therein or of ascertaining the amount of the pay roll of any employer, or of ascertaining whether any industry or person is under the operation of Part I and whether in Schedule 1 or Schedule 2, and for the purpose of any such examination and enquiry the Board and the person so appointed shall have all the powers which may be conferred on a commissioner appointed under *The Public Inquiries Act*. (*As amended by s. 21, c. 24, 1915*).

(2) **Penalty for Obstruction.**—An employer and every other person who obstructs or hinders the making of the examination and inquiry mentioned in subsection 1 or refuses to permit it to be made shall incur a penalty not exceeding \$500.

(3) **Officers of Board Authorized to Take Declarations.**—Every member of the Board and every officer or person authorized by it to make examination or inquiry under this section shall have power and authority to require and take affidavits, affirmations or declarations as to any matter of such examination or inquiry and to

take statutory declarations required under section 78, and in all such cases to administer oaths, affirmations and declarations and certify to the same having been made. (*Added by s. 21, c. 24, 1915*).

80. Assessment May Be Made to Correspond with Pay Rolls.—

(1) If a statement is found to be inaccurate the assessment shall be made on the true amount of the pay roll as ascertained by such examination and enquiry or if an assessment has been made against the employer on the basis of his pay roll being as shown by the statement the employer shall pay to the Board the difference between the amount for which he was assessed and the amount for which he would have been assessed if the amount of the pay roll had been truly stated, and by way of penalty a sum equal to such difference.

(2) **Board May Relieve from Penalty.**—The Board if satisfied that the inaccuracy of the statement was not intentional and that the employer honestly desired to furnish an accurate statement, may relieve him from the payment of the penalty provided for by subsection 1 or any part of it.

81. Board to Have Right to Inspect Premises of Employer.—

(1) The Board and any member of it and any officer or person authorized by it for that purpose shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the accident fund and the premises connected with it and every part of them for the purpose of ascertaining whether the ways, works, machinery or appliances therein are safe, adequate and sufficient and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the Board may deem necessary for the purpose of determining the proportion in which such employer should contribute to the accident fund.

(2) **Penalty for Obstruction.**—An employer and every other person who obstructs or hinders the making of any inspection made under the authority of subsection 1, or refuses to permit it to be made, shall incur a penalty not exceeding \$500.

82. Information Obtained Not to Be Divulged.—(1) No officer of the Board and no person authorized to make an inquiry under this Part shall divulge or allow to be divulged except in the performance of his duties or under the authority of the Board any information obtained by him or which has come to his knowledge in making or in connection with an inspection or inquiry under this Part.

(2) **Penalty.**—Every person who contravenes any of the provisions of subsection 1 shall incur a penalty not exceeding \$50.

83. Recovery and Application of Penalties.—The penalties imposed by or under the authority of this Part shall be recoverable under *The Ontario Summary Convictions Act* and when collected shall be paid over to the Board and shall form part of the accident fund.

ASSESSMENTS.

84. Provisional Assessment.—(1) The Board shall before the day named by proclamation as mentioned in section 3 make a pro-

visional assessment on the employers in each class of such sum as in the opinion of the Board will be sufficient to meet the claims for compensation which will be payable by that class for the first year after the day so named and to meet the expenses of the Board in the administration of this Part for the year, and also to provide a reserve fund to pay the compensation payable in future years in respect of claims in that class for accidents happening in that year, of such an amount as the Board may deem necessary to prevent the employers in future years from being unduly or unfairly burdened with payments which are to be made in those years in respect of accidents which have previously happened.

(2) **How Assessment May Be Based.**—The sums to be so assessed may be either a percentage of the pay rolls of the employers or a specific sum as the Board may determine.

(Subsection 3 of s. 84 repealed by s. 22, c. 24, 1915).

85. Subsequent Assessments.—(1) The Board shall in every year thereafter assess and levy upon the employers in each of the classes such percentage of pay roll or such other rate or such specific sum as, allowing for any surplus or deficit in the class, it shall deem sufficient to pay the compensation during the current year in respect of injuries to workmen in the industries within the class, and to provide and pay the expenses of the Board in the administration of this Part for that year or so much thereof as may not be otherwise provided for, and also to provide a similar reserve fund to that mentioned in subsection 1 of section 84; and such assessments may, if the Board sees fit, be levied provisionally upon the estimate of pay roll given by the employer or upon an estimate fixed by the Board and, after the actual pay roll has been ascertained, adjusted to the correct amount; and the payment of assessments may, if the Board deems fit, be divided into instalments. *(As amended by s. 23, c. 24, 1915).*

(2) **Deduction from Pay Roll of Proportion of Wages.**—Where the assessment is based on the pay roll of the employer and there is included in it the wages or salary of a workman who has been paid more than at the rate of \$2,000 per annum the excess shall be deducted from the amount of the pay roll and the assessment shall be based on the amount of it as so reduced.

(3) **Assessments Need Not Be Uniform.**—It shall not be necessary that the assessment upon the employers in a class or subclass shall be uniform, but they may be fixed or graded in relation to the hazard of each or of any of the industries included in the class or sub-class.

86. Rate of Assessment to Be Fixed by the Board.—(1) "The Board shall determine and fix the percentage, rate or sum for which each employer is assessed under the provisions of either of the next preceding two sections, or the provisional amount thereof, and such employer shall pay to the Board the amount or provisional amount of his assessment within fifteen days after notice of the assessment and of such amount has been given to him, or where payment is to be made by instalments he shall pay the first instalment within such fifteen days and the remaining instalment or instalments at the time or times specified in such notice. *(As amended by s. 24 (a), c. 24, 1915).*

(2) **How Notice May Be Served.**—The notice may be sent by post to the employer and shall be deemed to have been given to

him on the day on which the notice was posted. (*As amended by s. 24 (b), c. 24, 1915*).

(3) **Revision of Assessments.**—Wherever at any time it appears that a statement or estimate of pay roll upon which an assessment or provisional amount of assessment is based is too low the employer shall upon demand pay to the Board such sum, to be fixed by the Board, as shall be sufficient to bring the payment of assessment up to the proper amount; and payment of any such sum may be enforced in the same manner as the payment of any assessment may be enforced. (*Added by s. 24 (c), c. 24, 1915*).

87. Insufficient Assessment to Be Made Up by Supplementary Assessments.—If the amount realized from any assessment is insufficient for the purpose for which the assessment was made, the Board may make supplementary assessments to make up the deficiency, and section 86 shall apply to such assessments, but the Board may defer assessing for such deficiency until the next annual assessment is made and then include it in such assessment. (*As amended by s. 25, c. 24, 1915*).

88. All Classes May Be Assessed for Deficiency in Any of Them.—(1) Where any deficiency in the amount realized from any assessment in any class is caused by the failure of some of the employers in that class to pay their share of the assessment or by any disaster or other circumstance which, in the opinion of the Board, would unfairly burden the employers in that class, the deficiency or loss shall be made up by supplementary assessments upon the employers in all the classes and the provisions of section 86 shall apply to such assessments, but the Board may defer assessing for such deficiency or loss until the next annual assessment is made and then include it in such assessment. (*As amended by s. 26 (a), (b), c. 24, 1915*).

(2) **Special Fund.**—The Board may where it deems proper add to the assessment for any class or classes or for all the classes in Schedule 1 a percentage or sum for the purpose of raising a special fund to be laid aside and used to meet the loss arising from any disaster or other circumstance which, in the opinion of the Board, would unfairly burden the employers in any class. (*Added by s. 26 (c), c. 24, 1915*).

89. Where Deficiency Made Good by Employer, Mode of Application of Payment.—(1) If and so far as any deficiency mentioned in the next preceding two sections is afterwards made good wholly or partly by the defaulting employer the amount which shall have been made good shall be apportioned between the other employers in the proportions in which the deficiency was made up by them by the payment of supplementary assessments upon them and shall be credited to them in making the next assessment.

(2) **Employer Not Assessed Liable to Pay Amount for Which He Should Have Been Assessed.**—If for any reason an employer liable to assessment is not assessed in any year he shall nevertheless be liable to pay to the Board the amount for which he should have been assessed, and payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.

(3) **Amount Collected to Be Taken Into Account in Making Subsequent Assessment.**—Any sum collected from an employer under subsection 2 shall be taken into account by the Board in making an assessment in a subsequent year on the employers in the class or sub-class to which such employer belonged.

90. Employer Liable to Pay Unpaid Sums.—Notwithstanding that the deficiency arising from a default in the payment of the whole or part of any assessment has been made up by a special assessment a defaulting employer shall continue liable to pay to the Board the amount of every assessment made upon him or so much of it as remains unpaid.

91. Lieutenant-Governor in Council May Require Supplementary Assessments to Be Made.—Whenever the Lieutenant-Governor in Council is of opinion that the condition of the accident fund is such that with the reserves, exclusive of the special reserve, it is not sufficient to meet all the payments to be made in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have happened in previous years, he may require the Board to make a supplementary assessment of such sum as in his opinion is necessary to be added to the fund, and when such a requirement is made the Board shall forthwith make such supplementary assessment and it shall be made in like manner as is hereinbefore provided as to other special assessments and all the provisions of this Part as to special assessments shall apply to it.

92. Formation of Reserves.—In order to maintain the accident fund as provided by section 1 the Board may from time to time and as often as may be deemed necessary include in any sum to be assessed upon the employers and may collect from them such sums as may be deemed necessary for that purpose and the sums so collected shall form a reserve fund and shall be invested in securities in which a trustee may by law invest trust moneys.

93. Penalty for Non-payment of Assessment.—If an assessment or a special assessment is not paid at the time when it becomes payable, the defaulting employer shall be liable to pay and shall pay as a penalty for his default such a percentage upon the amount unpaid as may be prescribed by the Regulations or may be determined by the Board.

93a. Additional Liability for Failure to Pay Assessment.—(1) Any employer who refuses or neglects to make or transmit any pay roll return or other statement required to be furnished by him under the provisions of sections 78 or 96, or who refuses or neglects to pay any assessment or special or supplementary assessment or the provisional amount of any assessment, or any instalment or part thereof, shall, in addition to any penalty or other liability to which he may be subject, pay to the Board the full amount or capitalized value, as determined by the Board, of the compensation payable in respect of any accident to a workman in his employ which happens during the period of such default, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

(2) **Relieving Clause.**—The Board, if satisfied that such de-

fault was excusable, may in any case relieve such employer in whole or in part from liability under this section. (*Added by s. 27, c. 24, 1915*).

94. Collection of Unpaid Assessments.—Where default is made in the payment of any assessment, or special assessment, or any part of it the Board may issue its certificate stating that the assessment was made, the amount remaining unpaid on account of it and the person by whom it was payable and such certificate or a copy of it certified by the Secretary to be a true copy may be filed with the clerk of any county or district court and when so filed shall become an order of that court and may be enforced as a judgment of the court against such person for the amount mentioned in the certificate.

95. Board May Collect Assessment Through Municipal Collectors.—(1) If an assessment or a special assessment or any part of it remains unpaid for 30 days after it has become payable, the Board, in lieu of or in addition to proceeding as provided by the next preceding section, may issue its certificate stating the name and residence of the defaulting employer, the amount unpaid on the assessment, the establishment in respect of which it is payable, and upon the delivery of the certificate to the clerk of the municipality in which the establishment is situate he shall cause the amount so remaining unpaid as stated in the certificate to be entered upon the collector's roll as if it were taxes due by the defaulting employer in respect of such establishment, and it shall be collected in like manner as taxes are levied and collected and the amount when collected shall be paid over by the collector to the Board.

(2) **Collector Entitled to Percentage.**—The collector shall be entitled to add five per cent. thereof to the amount to be collected and to retain such percentage for his services in making the collection.

96. Case of Industries Established After Assessment Made.—(1) Where an industry coming within any of the classes for the time being included in Schedule 1 is established or commenced after an assessment has been made it shall be the duty of the employer forthwith to notify the Board of the fact and to furnish to the Board an estimate of the probable amount of his pay roll for the remainder of the year, verified by a statutory declaration, and to pay to the Board a sum equal to that for which he would have been liable if his industry had been established or commenced before such assessment was made or so much thereof as the Board may deem reasonable.

(2) **Powers of Board.**—The Board shall have the like powers and be entitled to the like remedies for enforcing payment of the sum payable by the employer under subsection 1 as it possesses or is entitled to in respect of assessments.

(3) **Penalty.**—For default in complying with the provisions of subsection 1 the employer shall incur the like penalty as is provided with respect to defaults by section 78.

97. Case of Industry Temporarily Carried On.—(1) Where an employer engages in any of the industries for the time being included in Schedule 1 and has not been assessed in respect of it,

the Board, if it is of opinion that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the Board of a sum sufficient to pay the assessment for which the employer would have been liable if the industry had been in existence when the next preceding assessment was made.

(2) **Powers of Board.**—The Board shall have the like powers and be entitled to the like remedies for enforcing payment of any such sum as it possesses or is entitled to in respect of assessments.

(3) **Penalty.**—An employer who makes default in complying with the provisions of subsection 1 shall incur a penalty not exceeding \$200 and an additional penalty not exceeding \$20 per day for every day on which the default continues.

98. Liability of Owner Under Rev. Stat. c. 140, for Contribution of Employer to Accident Fund.—In the case of a work or service performed by an employer in any of the industries for the time being included in Schedule 1 for which the employer would be entitled to a lien under *The Mechanics' and Wage Earners' Lien Act* it shall be the duty of the owner as defined by that Act to see that any sum which the employer is liable to contribute to the accident fund is paid and if any such owner fails to do so he shall be personally liable to pay it to the Board, and the Board shall have the like powers and be entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

98a. Priority of Assessments and Compensation in Distribution of Assets.—(1) There shall be included among the debts which, under *The Assignments and Preferences Act*, *The Trustee Act*, and *The Ontario Companies Act*, are, in the distribution of the property, in the case of an assignment or death or in the distribution of the assets of a company being wound up, under the said Acts respectively, to be paid in priority to all other debts, the amount of any assessment or compensation the liability whereof accrued before the date of the assignment or death or before the date of the commencement of the winding up, and the said Acts shall have effect accordingly.

(2) When the compensation is a periodical payment the liability in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum, to be determined by the Board, for which the periodical payments may be commuted.

(3) Priority in respect of any individual claim for compensation shall not exceed \$500. (*Added by s. 28, c. 24, 1915*).

RETURNS OF ACCIDENTS.

99. Employers to Give Notice of Accidents.—(1) Every employer shall within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages notify the Board in writing of the:—

- (a) happening of the accident and nature of it;
- (b) time of its occurrence;
- (c) name and address of the workman;
- (d) place where the accident happened;
- (e) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury;

and shall in any case furnish such further details and particulars

respecting any accident or claim to compensation as the Board may require. (*As amended by s. 29, c. 24, 1915*).

(2) **Penalty.**—For every contravention of subsection 1 the employer shall incur a penalty not exceeding \$50.

INDUSTRIAL DISEASES.

100. Certain Industrial Diseases to Be Deemed Accidents.—(1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed or his death is caused by an industrial disease and the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments the workman or his dependants shall be entitled to compensation as if the disease were a personal injury by accident and the disablement were the happening of the accident, subject to the modifications hereinafter mentioned, unless at the time of entering into the employment he had wilfully and falsely represented himself in writing as not having previously suffered from the disease.

(2) **By Whom Compensation Payable.**—Where the compensation is payable by an employer individually it shall be payable by the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due.

(3) **Names of Former Employers to Be Furnished by Claimants.**—The workman or his dependants if so required shall furnish the employer mentioned in the next preceding subsection with such information as to the names and addresses of all the other employers by whom he was employed in the employment to the nature of which the disease was due during such twelve months as such workman or his dependants may possess, and if such information is not furnished or is not sufficient to enable that employer to take the proceedings mentioned in subsection 4 that employer upon proving that the disease was not contracted while the workman was in his employment shall not be liable to pay compensation.

(4) **Last Employer May Bring in Former Employers.**—If that employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer he may bring such employer before the Board and if the allegation is proved that other employer shall be the employer by whom the compensation shall be paid.

(5) **Where Disease Result of Gradual Process, Former Employers to Contribute.**—If the disease is of such a nature as to be contracted by a gradual process any other employers who during such twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer by whom the compensation is payable such contributions as the Board may determine to be just.

(6) **How Compensation to Be Fixed.**—The amount of the compensation shall be fixed with reference to the earnings of the workman under the employer by whom the compensation is payable and the notice provided for by section 20 shall be given to the employer who last employed the workman during such twelve months

in the employment to the nature of which the disease was due and the notice may be given notwithstanding that the workman has voluntarily left the employment.

(7) **Presumptions as to Disease Being Due to Nature of Employment.**—If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of Schedule 3 and the disease contracted is the disease in the first column of the Schedule set opposite to the description of the process the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

(8) **Right to Compensation Where Disease Is Result of an Injury Not to Be Affected.**—Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is the result of an injury in respect of which he is entitled to compensation under this Part.

FORMATION OF ASSOCIATIONS AND COMMITTEES.

101. Associations of Employers May Be Formed.—(1) The employers in any of the classes for the time being included in Schedule 1 may form themselves into an association for accident prevention and may make rules for that purpose.

(2) **Rules of Associations if Approved to Be Binding on the Members of the Class.**—If the Board is of opinion that an association so formed sufficiently represents the employers in the industries included in the class, the Board may approve such rules, and when approved by the Board and by the Lieutenant-Governor in Council they shall be binding on all the employers in industries included in the class.

(3) **Payment of Salary of Inspector or Expert Out of Accident Fund.**—Where an association under the authority of its rules appoints an inspector or an expert for the purpose of accident prevention, the Board may pay the whole or any part of the salary or remuneration of such inspector or expert out of the accident fund or out of that part of it which is at the credit of any one or more of the classes as the Board may deem just.

(4) The Board may in any case where it deems proper make a grant toward the expenses of any such association. (*Added by s. 30, c. 24, 1915*).

(5) **Grant to Safety Associations.**—Any moneys paid by the Board under this section shall be charged against the class represented by such association and levied as part of the assessment against such class. (*Added by s. 30, c. 24, 1915*).

(6) **"Class" Defined.**—The word "class" in this section shall include sub-class or such part of a class or such number of classes or parts of classes in Schedule 1 as may be approved by the Board. (*Added by s. 30, c. 24, 1915*).

102. Committee of Employers.—(1) The employers in any of the classes for the time being included in Schedule 1 may appoint a Committee of themselves, consisting of not more than five employers, to watch over their interests in matters to which this Part relates.

(2) **Board May Act on Certificate of Committee as to Payment of Compensation.**—Where a claim is for compensation for an injury for which the employers in any such class would be liable, if the Board is of the opinion that the Committee sufficiently represents such employers, and the Committee certifies to the Board that it is satisfied that the claim should be allowed, the Board may act on the certificate and may also act upon the certificate of the Committee as to the proper sum to be awarded for compensation if the workman or dependant is satisfied with the sum named in the certificate.

(3) **Medium of Communication.**—The Committee may be the medium of communication on the part of the class with the Board.

CONTRIBUTION BY EMPLOYERS IN SCHEDULE 2.

103. Contribution by employers individually liable to expenses of administration.—Employers in industries for the time being included in Schedule 2 shall pay to the Board such proportion of the expenses of the Board in the administration of this Part as the Board may deem just and determine, and the sum payable by them shall be apportioned between such employers and assessed and levied in like manner as in the case of assessments for contributions to the accident fund, and the provisions of this Part as to making such assessments shall apply (*mutatis mutandis*) to assessments made under the authority of this section.

104. Application of Part I.—This part shall apply only to the industries mentioned in Schedules 1 and 2 and to such industries as shall be added to them under the authority of this Part and to employments therein.

PART II.

105. Application of Part II to outworkers, clerks and casual employees.—Subject to section 109 sections 106 to 108 shall apply only to the industries to which Part I does not apply and to the workmen employed in such industries, but outworkers and persons engaged in clerical work and not exposed to the hazards incident to the nature of the work carried on in the employment and persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business, who are employed in industries under the operation of Part I but who are excluded from the benefit of the provisions of Part I, shall not by this section be excluded from the benefit of the provisions of sections 106 to 108. (*As amended by s. 31, c. 24, 1915*).

106. Liability of employer for defective ways, works, etc., and for negligence of his servants.—(1) Where personal injury is caused to a workman by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of his employer or by reason of the negligence of his employer or of any person in the service of his employer acting within the scope of his employment the workman or if the injury results in death the legal personal representatives of the workman and any person entitled in case of death shall have an action against the employer, and if the action is brought by the workman he shall be entitled to recover from the employer the damages sustained by the workman by or in consequence of the injury,

and if the action is brought by the legal personal representatives of the workman or by or on behalf of persons entitled to damages under *The Fatal Accidents Act* they shall be entitled to recover such damages as they are entitled to under that Act.

(2) **Liability of person supplying defective ways, works, plant, etc.**—Where the execution of any work is being carried into effect under any contract, and the person for whom the work is done owns or supplies any ways, works, machinery, plant, buildings or premises, and by reason of any defect in the condition or arrangement of them personal injury is caused to a workman employed by the contractor or by any sub-contractor, and the defect arose from the negligence of the person for whom the work or any part of it is done or of some person in his service and acting within the scope of his employment, the person for whom the work or that part of the work is done shall be liable to the action as if the workman had been employed by him, and for that purpose shall be deemed to be the employer of the workman within the meaning of this Act, but any such contractor or sub-contractor shall be liable to the action as if this subsection had not been enacted but not so that double damages shall be recoverable for the same injury.

(3) **Liability of contractor and sub-contractor.**—Nothing in subsection 2 shall affect any right or liability of the person for whom the work is done and the contractor or sub-contractor as between themselves. See R.S.O. 1914, cap. 146, s. 4.

(4) **Effect of continuance in employment after knowledge.**—A workman shall not by reason only of his continuing in the employment of the employer with knowledge of the defect or negligence which caused his injury be deemed to have voluntarily incurred the risk of the injury. See R.S.O. 1914, cap. 146, s. 6, last part.

107. Certain common law rules abrogated.—Rev. Stat. c. 151. —A workman shall hereafter be deemed not to have undertaken the risks due to the negligence of his fellow workmen and contributory negligence on the part of a workman shall not hereafter be a bar to recovery by him or by any person entitled to damages under *The Fatal Accidents Act* in an action for the recovery of damages for an injury sustained by or causing the death of the workman while in the service of his employer for which the employer would otherwise have been liable.

108. Contributory negligence to be considered in assessing damages.—Contributory negligence on the part of the workman shall nevertheless be taken into account in assessing the damages in any such action.

109. Farm labourers and domestic servants excluded.—This Act shall not apply to farm labourers or domestic or menial servants or their employers.

110. Rev. Stat. c. 146, repealed.—*The Workmen's Compensation for Injuries Act*, being Chapter 146 of the Revised Statutes of Ontario, 1914, is hereby repealed.

111. Date when Part to take effect.—This Part shall take effect on, from and after the day named in the proclamation mentioned in section 3.

SCHEDULE 1.

Industries the Employers in which are Liable to Contribute to the Accident Fund.

(As altered by Regulations.)

Class 1.—Lumbering; logging, river-driving, rafting, booming; saw-mills, shingle-mills, lath-mills; manufacture of veneer, excelsior, staves, spokes, or headings; lumber yards (including the delivery of lumber) carried on in connection with saw-mills; the creosoting of timbers.

Class 2.—Pulp and paper mills.

Class 3.—Manufacture of furniture, interior woodwork, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware, mattresses, bed-springs, artificial limbs, cork articles, cork carpets or linoleum; **upholstering. **picture framing and **cabinet work.

Class 4.—Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, articles and wares or baskets, matches or shade rollers; lumber yards (including the delivery of lumber) carried on in connection with planing mills or sash and door factories; cooperage, not including the making of staves or headings.

Class 5.—‡Mining; reduction of ores and smelting; preparation of metals or minerals; boring and drilling including sinking of artesian wells (except when done by an employer coming under Class 13); manufacture of calcium cabide, carborundum or alundum.

Class 6.—Sand, shale, clay or gravel pits; marble works, stone cutting or dressing; manufacture of brick, tile, terra-cotta, fire-proofing, paving blocks, sewer pipe, roof tile, plaster blocks, plaster board, slate or artificial stone.

Sub-Class A of Class 6.—Quarries, stone crushing, lime kilns; manufacture of cement.

Class 7.—Manufacture of glass, glass products, glassware, porcelain or pottery.

Class 8.—Iron, steel, or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, shot, sheet metal, boilers, furnaces, stoves, structural steel, iron or metal.

Class 10.—Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, screens, bolts, metal beds, sanitary, water, gas or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, sheet metal products, buttons of metal, ivory, pearl or horn, dry batteries, cameras, sporting goods, firearms, windmills, ivory articles, **rubber stamps, pads or stencils; **machine shops, not elsewhere included in Schedule 1 or Schedule 2; **the industry of carrying on a blacksmith shop.

Class 11.—Manufacture of agricultural implements, threshing machines, traction engines, waggons, carriages, sleighs, vehicles, automobiles, motor trucks, toy waggons, sleighs or baby carriages; car shops.

* See Regulation 43.

† See Regulation 44.

‡ See Regulation 45.

** See Regulation 46.

Class 12.—Manufacture of gold or silverware, platedware, †watches, watch-cases, †clocks, †jewellery, or musical instruments.

Class 13.—Manufacture of chemicals, corrosive acids, or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, including the handling and delivery thereof; wood alcohol, celluloid articles; the manufacture, transmission and distribution of natural or artificial gas and operations connected therewith; the cutting, storing, handling and delivery of natural ice.

Sub-Class A of Class 13.—The manufacture of fireworks, gun-powder, ammunition, nitro-glycerine, dynamite, gun-cotton or other high explosives.

Class 14.—Manufacture of paint, color, varnish, oil, japans, turpentine, printing ink, printers' rollers, tar, tarred, pitched or asphalted paper.

Class 15.—Distilleries, breweries; manufacture of spirituous or malt liquors, malt, alcohol, wine, vinegar, cider, mineral water, soda waters, or methylated spirits.

Class 16.—Manufacture of non-hazardous chemicals, †drugs, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations; shoe-blackening or polish, yeast, baking powder or mucilage.

Class 17.—Milling; manufacture of cereals or cattle foods, warehousing or handling of grain or operation of grain elevators, †threshing machines, ‡clover mills, or ‡ensilage cutters.

Class 18.—†Manufacture or preparation of meats or meat products or glue.

Sub-Class A of Class 18.—Packing houses, **abattoirs; manufacture of fertilizers not incidental to any other industry.

Class 19.—Tanneries.

Class 20.—Manufacture of leather goods and products, belting, whips, saddlery, †harness, trunks, valises, trusses, imitation leather, †boots, †shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires or hose.

Class 22.—Sugar refineries; manufacture of †dairy products, ‡butter, ‡cheese, condensed milk or cream, biscuits, ‡confectionery, spices, condiments, salt or any kind of starch; ‡bakeries.

Sub-Class A of Class 22.—Canning or preparation of fruit, vegetables, fish or food-stuffs; pickle factories.

Class 24.—Manufacture of tobacco, cigars, cigarettes or tobacco products.

Class 26.—Flax mills; manufacture of textiles or fabrics, spinning, weaving and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy, felt, cordage, ropes, fibre, brooms or brushes; asbestos goods, hair cloth and other hair goods; work in manilla or hemp; tents, awnings, and articles not otherwise specified made from fabrics or cordage; the erection of awnings by the manufacturer.

Class 27.—*Manufacture of men's or women's clothing, white-wear, shirts, collars, corsets, hats, caps, furs, robes, ‡feathers or artificial flowers.

Class 28.—‡Power laundries; ‡dyeing, cleaning or bleaching.

* See Regulation 43.

† See Regulation 44.

‡ See Regulation 45.

** See Regulation 46.

Class 29.—Printing, photo-engraving, engraving, lithographing, book-binding, embossing; †manufacture of stationery, paper, card-board boxes, bags, wall-paper, or papier-mache.

Class 30.—Heavy teaming or cartage; safe-moving or moving or boilers, heavy machinery, building stone and the like; warehousing, storage; teaming and cartage, including the hauling for hire by means of any vehicle, howsoever drawn or propelled, of any commodity or material; ‡scavenging, street cleaning or removal of snow or ice.

Class 32.—Steel building and bridge construction; installation of elevators, fire-escapes, boilers, engines or heavy machinery; bridge building, not included in Schedule 2; the erection of wind-mills.

Class 33.—Bricklaying, mason work, stone setting, concrete work, plastering; manufacture of concrete blocks; structural carpentry, lathing, the installation of pipe organs; house wrecking or house moving.

Class 35.—Painting, decorating or renovating; sheet metal work and roofing.

Class 36.—Plumbing, sanitary or heating engineering, gas and steam fitting; operation of theatre stage or moving pictures; operation of passenger or freight elevators, where workmen are specially employed therefor and which are not operated in connection with an industry included in another class, including the operation of elevators used in connection with an industry to which this Schedule does not apply or in connection with a warehouse or shop or an office or other building or premises.

Class 37.—Sewer construction, tunnelling, shaft-sinking and well-digging; **the maintenance and operation of a waterworks system; excavation work for cellars, foundations and canals; trenching less than 6 feet deep, for gas pipes, water-pipes or wire conduits; and all excavation work where the depth is more than 6 feet and the width is less than half the depth.

Class 38.—Construction, intallation or operation of electric power lines or appliances, and power transmission lines; electric wiring of buildings and installation of lighting fixtures; construction or operation of an electric light system; construction and operation of power plants and electric light works, not included in Schedule 2; construction or operation of telegraph or telephone lines, construction or operation of telephone lines and works for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company, except where such telephone lines or works are within the legislative authority of the Parliament of Canada.

Class 41.—Construction or operation of railways; road-making or repair of roads with machinery; making and repairing of roads of all kinds not included in Schedule 2; manufacture of asphalt material and paving material.

Class 43.—Ship building, dredging, subaqueous construction or pile-driving; fishing, stevedoring, operation of and work upon wharves, operation of dry docks not included in Schedule 2.

Class 73.—All industries, trades, business, and occupations mentioned in section 73 of the Act, not otherwise classified and not included in Schedule 2.

(NOTE.—See sections 109, 69 (2), 6 (3), 3 (4), 6, 11, 12, 75 (2), and paragraphs (p), (n), (d), (i), (k), and (f) of 2 (1), and Regulations 43 to 50, 52, 53, and 63).

* See Regulation 43.

† See Regulation 44.

‡ See Regulation 45.

** See Regulation 46.

SCHEDULE 2.**Industries, the Employers in which are Individually Liable to Pay the Compensation.**

1. The trade or business, as defined by subsection 2 of section 2, of a municipal corporation, a public utilities commission, any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation, a board of trustees of a police village and a school board. (*As amended by s. 33 (a), c. 24, 1915*).

2. The construction or operation of railways operated by steam, electric or other motive power, street railways and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway.

3. The construction or operation of car shops, machine shops, steam and power plants and other works for the purposes of any such railway or used or to be used in connection with it when constructed or operated by the company which owns or operates the railway.

4. The construction or operation of telephone lines and works within the legislative authority of the Parliament of Canada, for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company. (*As altered by Regulation 35*).

5. The construction or operation of telegraph lines and works for the purposes of the business of a telegraph company or used or to be used in connection with its business when constructed or operated by the company.

6. The construction or operation of steam vessels and works for the purposes of the business of a navigation company or used or to be used in connection with its business when constructed or operated by the company, and all other navigation, towing, operation of vessels, and marine wrecking. (*As amended by s. 33 (b), c. 24, 1915*).

7. The operation of the business of an express company which operates on or in conjunction with a railway, or of sleeping, parlor or dining cars, whether operated by the railway company, or by an express, sleeping, parlor or dining car company.

(NOTE.—*See sections 2 (2), 69 (2), 6 (3), 3 (4), 6, 109, and paragraphs (p), (n), (d), (i), and (f) of 2 (1).*)

SCHEDULE 3.

Description of Disease.	Description of Process.
Anthrax.	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorous or its preparations or compounds.
Arsenic poisoning or its sequelæ.	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis.	Mining.

SYNOPSIS OF REGULATIONS.

Up to 15th May, 1915, 64 Regulations in all have been passed by the Board and approved by the Lieutenant-Governor in Council, each clause or section, for convenience, being numbered as a separate Regulation.

Except No. 7, which extended the time within which employers were required to furnish their first pay roll statement; No. 47, which applies the interpretation clauses of the Act to the Regulations; No. 51, which provides for penalty in case of default in paying assessments; Nos. 56 and 59, which prescribe the manner in which compensation is to be paid by employers in Schedule 2; and No. 64, which provides for posting up information concerning the Act—all these Regulations have to do with the classification of industries in Schedule 1, and with additions to, exclusions from or interpretation of the Schedules.

A number of industries, including as far as could be foreseen those comprised in the general description of Section 73, have been added to their appropriate classes in Schedule 1.

To insure better protection for the payment of compensation, and for greater uniformity, the construction or operation by telephone companies of telephone lines and works within the legislative authority of the Province has been removed from Schedule 2 to Schedule 1.

To avoid, as far as possible, weakness in any of the classes and consequent danger of deficits in the class funds, a number of the classes in Schedule 1 have been united, thus reducing the original 44 classes to 35.

For greater certainty in making clear what was understood to be the intention of the Act, mercantile business, stock-raising, fruit-growing, gardening, hotel-keeping, barber shops, educational, hospital, surgical, medical and veterinary work, dentistry, undertaking, etc., have been expressly excluded from the operation of Part I (see Regulation 43); as also have such operations as coffee grinding, meat cutting, pipe cutting, and boot and shoe making and repairing, when carried on as part of, in immediate connection with, and for the purposes of an exclusively retail business (see Regulation 44).

In other cases where the hazard of the work was considered very light, or where it was considered a matter of practical impossibility, at least in the early stages of the administration of the Act, to obtain the names of and collect assessments from all the employers in the industry, and where the other employers in the industry would thus be unfairly burdened with the whole expense, a number of exclusions have been made. Among these are hand laundries, window cleaning, cab, livery stable, architect and photograph business, work carried on as part of, in immediate connection with, and for the purpose of an exclusively retail business dealing in men's and women's clothing (including merchant tailor and millinery shops) and the trimming of women's hats when carried on as a part of or incidental to a wholesale millinery business (see Regulation 43).

For similar reasons, manufacture of cheese, butter, feathers, or artificial flowers, confectioneries, bakeries, power laundries, certain prospecting and development work, operation of threshing machines, street cleaning, etc., have been excluded where less than six workmen are usually employed (see Regulation 45).

Machine shops, repair shops, cabinet work (in shop), up-

holstering, etc., when not incidental to an industry in Schedule 1, are excluded where less than four workmen are usually employed (see Regulation 46).

As to the exclusions mentioned in the last two paragraphs, it is to be remembered, however, that any employer excluded because of having less than a specified number of workmen employed may nevertheless elect to come under Schedule 1 if he chooses (section 75 (2)).

The operation of freight or passenger elevators, which was originally included in every case, is excluded where not in an industry in Schedule 1, if no workman is specially employed for such operation (see Regulations 31, 55).

To preclude the contention that because an employer carries on one industry which is under Part I of the Act, other separate industries carried on by the same employer, even though not otherwise under Part I, are thereby brought under Part I of the Act—that because an employer, for instance, carries on a grist mill which is under Part I of the Act, a grocery store carried on by the same employer as a separate business will also come under Part I of the Act—it is expressly provided that such shall not be the case (see Regulation 48).

To make clear what was believed to be the intention of the Act, it is declared that an incidental service for which no direct charge is made to the customer, such as delivery of material in connection with a planing mill, or delivery of goods in connection with a grocery store, shall be considered as going with the business to which it is attached, and shall be included in or excluded from Schedule 1, according as the business is so included or excluded (see Regulation 49). Upon the other hand, work or service for which a direct charge is made and which is connected with but not a part of an industry carried on by the employer who renders it, is declared to be included in Schedule 1, if such work or service would, if carried on by itself, be included in Schedule 1 (see Regulation 50). These provisions, however, are subject to the provisions of any other Regulation.

To cover generally a question of interpretation, of which one phase is dealt with in Regulations 49 and 50, but which arises in a great variety of circumstances—namely, the question whether, or to what extent, things not themselves carried on or done by an employer as a business or trade or for profit or gain, but carried on or done by him for his own private use, or as a part of, incidentally to, or for the purpose of another business or trade, are included in Schedule 1 of the Act—Regulation 52 has been passed. The most frequent example of such things are building or repairing of buildings, warehousing or storage, and teaming or carting. If themselves carried on as a business, these are of course included in Schedule 1; but in a very great many cases they are carried on or done by the employer, not as a business or trade, but for his own private use, or as a part of, incidentally to, or for or for the purpose of another business or trade, and that business or trade may be one that is not included in Schedule 1 or one that is included in Schedule 1. As in keeping with the general intention of the Act, and as a convenient practical working principle, it is laid down by Regulation 52 that anything not itself carried on or done by the employer as a business or trade or for profit or gain, is to be included in Schedule 1 where, and only where, it is carried on or done as a part of or process in, or incidentally to, or for or for the purpose of an industry in Schedule 1. Thus the building or repairing of the employer's private dwelling-house or his grocery store will not be included in Schedule 1, but the building or

repairing of his woollen mill will be included in Schedule 1. Similarly, teaming, cartage, warehousing or storage work done for the employer's private dwelling or for his grocery business will not be included in Schedule 1, but similar work done for his woollen mill will be included in Schedule 1. This Regulation, it must be remembered, has application only in cases where the person having the work or operations carried on or done is himself the employer of the workmen, and not in cases where he lets a contract for the doing of the work; in the latter case, of course, the contractor, if he employs workmen, will be under Schedule 1; as he is carrying on the work as a business or trade or for profit or gain he is not affected by the provisions of this Regulation. Nor does this Regulation over-ride any special provision to the contrary, such as the provision respecting elevators, or the provision respecting building which is dealt with in the next paragraph.

In order to cover employers who are in substance carrying on building as a business, it is provided by Regulation 53 that the building of a house or the construction of any part thereof by an employer who within three years prior thereto has built another house, and the construction of any building to sell or let, shall be included in Schedule 1. This Regulation, like the preceding one, has application only in cases where the owner is himself the employer of the workmen. Where the work is let to a contractor there is no need of a Regulation.

For greater certainty, it is declared by Regulation 63 that operations (such for instance as work in the woods or jobs of teaming, etc.), carried on by a person whose business is substantially farming are not under the operation of Part I if less than four workmen other than farm labourers are employed therein.

REGULATIONS OF BOARD.

(To May 15, 1915.)

Regulation 1.

Passed the 1st day of October, 1914.

Approved by the Lieutenant-Governor in Council the 9th day of October, 1914.

The Workmen's Compensation Board hereby makes the following Regulation:—

1. The time within which employers are to transmit to the Workmen's Compensation Board their first pay-roll statement pursuant to section 78 of the Workmen's Compensation Act, is hereby extended to the 21st day of October, 1914.

Regulations 2 to 50.

Passed the 26th day of November, 1914.

Approved by the Lieutenant-Governor in Council the 26th day of November, 1914.

The Workmen's Compensation Board hereby makes the following Regulations respecting The Workmen's Compensation Act:—

2. Lumber yards (including the delivery of lumber) carried on in connection with saw mills, and the creosoting of timbers, are added to Class 1 of Schedule 1.

3. Manufacture of artificial limbs, cork articles, cork carpets and linoleum, and picture framing and cabinet work are added to Class 3 of Schedule 1.

4. Lumber yards (including the delivery of lumber) carried on in connection with planing mills or sash and door factories, and manufacture of matches and shade rollers are added to Class 4 of Schedule 1.

5. Cooperage, not including the making of staves or headings, is added to Class 4 of Schedule 1.

6. Boring and drilling, including sinking artesian wells (except when done by an employer coming under Class 13) and manufacture of calcium carbide, carborundum and alundum are added to Class 5 of Schedule 1 and removed from any other class in which they might otherwise respectively be.

7. Manufacture of sewer pipe, plaster blocks or plaster board, and manufacture of slate or roof tile are added to Class 6 of Schedule 1.

8. Classes 6 and 31 of Schedule 1 are united as Class 6.

9. Manufacture of shot is added to Class 8 of Schedule 1.

10. Manufacture of dry batteries, cameras, sporting goods, fire-arms, windmills, ivory articles, rubber stamps, pads or stencils is added to Class 10 of Schedule 1.

11. Machine shops not elsewhere included in Schedule 1 or Schedule 2, and the industry of carrying on a blacksmith shop, are added to Class 10 of Schedule 1.

12. Classes 9 and 11 of Schedule 1 are united as Class 11.

13. Manufacture, transmission and distribution of natural or artificial gas and operations connected therewith, the cutting, storing, handling and delivery of natural ice, as well as the handling and delivery of artificial ice, and the manufacture of wood alcohol and celluloid articles are added to and included in Class 13 of Schedule 1, and wood alcohol is withdrawn from any other class in which it might otherwise be.

14. Manufacture of fire-works, gunpowder, ammunition, nitro-glycerine, dynamite, guncotton and other high explosives is constituted into sub-class A of Class 13.

15. Manufacture of methylated spirits is added to Class 15 of Schedule 1.

16. Manufacture of yeast, baking powder and mucilage is added to Class 16 of Schedule 1.

17. Operation of threshing machines, clover mills and ensilage cutters is added to Class 17 of Schedule 1.

18. Manufacture of fertilizer not incidental to any other industry is added to Class 18 of Schedule 1.

19. Manufacture of whips, trusses and imitation leather is added to Class 20 of Schedule 1.

20. Manufacture of salt and the manufacture of starch of all kinds are added to Class 22 of Schedule 1 and are removed from any other class in which either of them might otherwise have been included.

21. Classes 21, 22 and 23 of Schedule 1 are united as Class 22.

22. Manufacture of tents, awnings, and articles not otherwise specified made from fabrics or cordage; the erecting of awnings by the manufacturer; and the manufacture of asbestos goods, hair cloth and other hair goods are added to Class 26 of Schedule 1.

23. Classes 25 and 26 of Schedule 1 are united as Class 26.

24. Manufacture of feathers and artificial flowers is added to Class 27 of Schedule 1.

25. Manufacture of papier mache articles is added to Class 29 of Schedule 1.

26. Teaming and cartage, including the hauling for hire by means of any vehicle, howsoever drawn or propelled, of any commodity or material, and scavenging street cleaning, and removal of snow or ice, are added to Class 30 of Schedule 1.

27. Bridge building, not included in Schedule 2, and the erection of windmills are added to Class 32 of Schedule 1 and excluded from any other class in Schedule 1 in which they might otherwise have been included.

28. Lathing, the installation of pipe organs, and house wrecking and house moving are added to Class 33 of Schedule 1.

29. Classes 33 and 34 of Schedule 1 are united as Class 33.

30. Gas and steam-fitting are added to Class 36 of Schedule 1.

31. The operation of freight or passenger elevators where no workman is specially employed therefor, except where used in another industry included in Schedule 1, is withdrawn from Schedule 1, and, subject thereto, the operation of freight passenger elevators in any industry included in any class in Schedule 1 is transferred from Class 36 to the class in which such industry is included, but the operation of freight or passenger elevators elsewhere than in such an industry shall remain and be in Class 36. (*As amended by 55.*)

32. Maintenance and operation of a waterworks system is added to Class 37 of Schedule 1.

33. Deep excavation is withdrawn from Class 37 of Schedule 1 and excavation work for cellars, foundations and canals; and trenching, less than 6 feet deep, for gas pipes, water pipes or wire conduits; and all excavation work where the depth is more than 6 feet and the width is less than half the depth are added to Class 37.

34. Electric wiring of buildings and installation of lighting fixtures, construction or operation of an electric light system and construction or operation of power plants and electric light works, not included in Schedule 2, are added to Class 38 of Schedule 1.

35. Construction or operation of telephone lines and works for the purposes of the business of a telephone company or used or to be used in connection with its business, when constructed or operated by the company as mentioned in paragraph 4 of Schedule 2, except where such telephone lines or works are within the legislative authority of the Parliament of Canada, is removal from Schedule 2 and added to Class 38 of Schedule 1.

36. Classes 38 and 39 of Schedule 1 are united as Class 38.

37. Making or repairing of roads of all kinds not included in Schedule 2 is added to Class 41 of Schedule 1.

38. Manufacture of asphalt material and paving material is transferred from Class 6 to Class 41 of Schedule 1.

39. Classes 40 and 41 of Schedule 1 are united as Class 41.

40. Fishing, navigation, and operation of all kinds of vessels, stevedoring, operation of and work upon wharves, towing, operation of dry-docks and marine-wrecking, not included in Schedule 2, are added to Class 43 of Schedule 1. (*As amended by 58.*)

41. Classes 42, 43 and 44 of Schedule 1 are united as Class 43.

42. All industries, trades, businesses and occupations mentioned in section 73 of the Act and not otherwise classified and not included in Schedule 2 shall form a class to be known as Class 73.

43. Subject to any provisions elsewhere contained respecting operation of elevators, each of the following industries is excluded from the operation of Part I, namely:—

- (a) The business of a florist or seedsman, seed-growing, gardening and horticulture; the keeping or breeding of live stock, poultry or bees; fruit growing; the picking, grading, packing, hauling, handling and storage of fruit or vegetables, carried on by co-operative fruit growers' associations or companies, whose membership or shareholders are limited to the producers of such

fruit or vegetables and whose object is to bring about more satisfactory handling and sale thereof and not to carry on such work or operations as a business for profit or gain;

- (b) Hand laundries;
- (c) The business of window-cleaning;
- (d) Barber shops and shoe shine establishments;
- (e) Manufacture of plaster statuary;
- (f) Undertaking and funeral directing;
- (g) Mail carrying;
- (h) Educational, hospital and surgical work, medical work, veterinary work and dentistry;
- (i) Wholesale or retail mercantile business;
- (j) Hotel-keeping and restaurant-keeping;
- (k) Public garages, livery stables, auction and sales stables and conveyance of passengers or passengers and baggage by horse or auto vehicle;
- (l) Taxidermy;
- (m) Junk dealing;
- (n) The business of an architect;
- (o) Excavation other than as specified in Regulation 33;
- (p) Every industry carried on as part of, in immediate connection with, and for the purpose of an exclusively retail business in men's or women's clothing, white-wear, shirts, collars, corsets, hats, caps, furs or robes;
- (q) The business of a photographer;
- (r) The trimming of women's hats when carried on as part of or incidental to a wholesale millinery business;
- (s) The pumping or raising and collecting and conveyance of petroleum by a person who does not refine or otherwise treat the same or prepare or manufacture any product therefrom. (*As amended by 60.*)

44. Each of the following industries when carried on as part of, in immediate connection with, and for the purpose of an exclusively retail business is excluded from the operation of Part I, namely:—

- (a) Watch, clock and jewellery making and repairing;
- (b) Boot and shoe making and repairing;
- (c) Harness-making and repairing;
- (d) The business of an optician;
- (e) Tinsmithing and tinsmith repairing in shop only;
- (f) Pipe cutting;
- (g) Paper cutting;
- (h) Drug manufacturing;
- (i) Sausage manufacturing;
- (j) Meat cutting;
- (k) Coffee grinding

and like operations or work.

45. Where less than six workmen are usually employed therein, each of the following industries is withdrawn from the class in Schedule 1 in which it would otherwise be included, namely:—

- (a) The cutting or splitting of firewood;
- (b) The manufacture of cheese or butter and the operation of creameries or dairies;
- (c) The construction or operation of telephone lines or works;
- (d) The manufacture of artificial limbs;
- (e) Power laundries, dyeing, cleaning or bleaching establishments;
- (f) Mining (including prospecting and development work) ex-

- cept in producing mines where the workmen are in the employ of the owner, lessee or recorded holder thereof;
- (g) Operation of threshing-machines, clover mills and ensilage cutters;
 - (h) Scavenging street cleaning and removal of snow or ice;
 - (i) Manufacture of feathers or artificial flowers;
 - (j) Confectioneries;
 - (k) *Bakeries. (As amended by 54.)*

NOTE.—Employers excluded by this Regulation have the right to elect to come in by notifying the Secretary: see section 75 (2)

46. Where less than four workmen are usually employed therein, each of the following industries, when not incidental to an industry under Schedule 1, is withdrawn from the class in Schedule 1 in which it would otherwise be included, namely:—

- (a) Machine shops;
- (b) Repair shops;
- (c) Tinsmith shops;
- (d) Carrying on of a blacksmith shop;
- (e) Cabinet work;
- (f) Upholstering;
- (g) Picture-framing;
- (h) Maintenance or operation of a waterworks system;
- (i) Manufacture of rubber stamps, pads or stencils;
- (j) Butchering. (*As amended by 61.*)

NOTE.—Employers excluded by this Regulation have the right to elect to come in by notifying the secretary: see section 75 (2.)

47. The interpretation of words and phrases provided for in section 2 of the Workmen's Compensation Act shall apply to these and all other Regulations of the Workmen's Compensation Board.

48. Except where otherwise specifically provided, every industry which, if carried on by an employer carrying on no other industry, would not be under the operation of Part I, is excluded from the operation of Part I where it is carried on by an employer who is also carrying on an industry or industries which is or are under the operation of Part I.

49. Subject to any other Regulation of the Board, every undertaking which consists of work or service (for example the delivery of goods), for which no direct charge is made and which is incidental to an industry under Part I, carried on by the employer who performs or renders such work or service, is added to or included in the class in which such industry is included; and when such undertaking is incidental to an industry not under Part I, it is included from the operation of Part I.

50. Subject to any other Regulation of the Board, every undertaking which consists of work or service for which a direct charge is made and which is connected with but not a part of an industry (whether such industry is under Part I or not) carried on by the employer who performs or renders such work or service, and which work or service if carried on separately would be an industry under the operation of Part I, is added to or included in the class of industries in which such undertaking if carried on by itself would be included.

Regulation 51.

Passed the 16th day of December, 1914.

Approved by the Lieutenant-Governor in Council the 31st day of December, 1914.

51. Any employer failing to pay any assessment or special assessment, or any prescribed portion thereof, within fifteen days

after notice thereof has been mailed to him by registered post, shall pay as a penalty for such default 5 per cent. of the amount unpaid; and, where default continues longer than one month after the expiration of such fifteen days, shall also pay as further penalty an additional one per cent. of such amount for each calendar month or fraction thereof such longer default continues.

Regulations 52 to 56.

Passed the 30th day of December, 1914.

Approved by the Lieutenant-Governor in Council the 30th day of December, 1914.

52. Unless otherwise specially provided, anything not itself carried on or done by the employer as a business or trade or for profit or gain, if, but for this Regulation, it would be an industry included in Schedule 1, is excluded from the operation of Part 1 of the Act except where it is carried on or done as a part of or process in, or incidentally to, or for or for the purpose of an industry in Schedule 1 which is carried on as a business or trade or for profit or gain; and where anything not itself carried on or done by the employer as a business or trade or for profit or gain is carried on or done as a part of or process in, or incidentally to, or for or for the purpose of an industry in Schedule 1 which is carried on by the employer as a business or trade or for profit or gain it shall be included in the class in Schedule 1 in which such last mentioned industry is included if it can be fairly assessed as part of such industry, but if it cannot be fairly so assessed, shall be included in the class in Schedule 1 to which, if carried on or done by the employer as a separate business or trade, it would belong.

53. Notwithstanding anything elsewhere contained, the building of a house, or the construction of any part thereof, by an employer who, within three years prior to the commencement of such building, has completed or had completed for him the building of another house, and the building or construction of any building or erection to sell or let in whole or in part, or the construction of any part thereof, shall each, whether or not it is done or carried on as a business or trade or for profit or gain, if not included in Schedule 2, be included in the class or respective classes of Schedule 1 to which according to the nature of the work it should belong.

54. (*Consolidated with 45.*)

55. (*Consolidated with 31.*)

56. Except where otherwise provided or directed, payment of compensation by employers in the industries included in Schedule 2 of the Act shall be made by delivery to the Board of a cheque or other negotiable paper payable at par at any branch of any chartered Bank in Ontario to the order of the workman or dependant to whom the compensation is payable, to be, by the Board, forwarded to such workman or dependant. This Regulation shall not apply to municipal corporations, school boards, boards of trustees of police villages, public utility commissions, or commissions having the management and conduct of any work or service owned by or operated for a municipal corporation, provided they make prompt payment of the compensation to the workman or dependant and promptly forward his receipt therefor to the Board. (*As amended by 59.*)

Regulations 57 to 58.

Passed the 13th day of January, 1915.

Approved by the Lieutenant-Governor in Council the 15th day of January, 1915.

57. Canning or preparation of fruit, vegetables, fish or food

stuffs, and pickle factories, are constituted into sub-class A of Class 22.

58. (*Consolidated with 40.*)

Regulations 59 to 64.

Passed the 28th day of April, 1915.

Approved by the Lieutenant-Governor in Council the 7th day of May, 1915.

59. (*Consolidated with 56.*)

60. (*Consolidated with 43.*)

61. (*Consolidated with 46.*)

62. The manufacture of malt and the manufacture of cider are added to Class 15 of Schedule 1.

63. For greater certainty, operations carried on by a person whose business is substantially farming, provided less than four workmen other than farm labourers are employed therein, are declared not to have been included in and are excluded from the operation of Part I.

64. Every employer in Schedule 1 or Schedule 2 shall, as directed by the Board, post up and keep posted up in conspicuous places within easy access of his workmen, such card or pamphlet of information concerning the Act as may be supplied to him by the Board, and a copy of the Act if so directed.

ORDERS.

Packing houses, abattoirs and manufacture of fertilizers not incidental to any other industry, are constituted into a sub-class to be known as sub-class A of Class 18 of Schedule 1.

Stone crushing is added to Class 6 of Schedule 1.

Quarries, stone crushing, lime kilns and manufacture of cement, are constituted into a sub-class to be known as sub-class A of Class 6 of Schedule 1.

NEW BRUNSWICK

CHAPTER 79, C. S. N. B., 1903

RESPECTING COMPENSATION TO RELATIVES OF PERSONS KILLED BY WRONGFUL ACT, NEGLECT OR DEFAULT

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NEW BRUNSWICK

CHAPTER 79, C. S. N. B.

RESPECTING COMPENSATION TO RELATIVES OF PERSONS KILLED BY WRONGFUL ACT, NEGLECT OR DEFAULT

1. Whenever hereafter the death of any person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued), have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case the person or body corporate who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured. C. S. c. 86, s. 1.

2. Every such action shall be for the benefit of the wife, husband, parent, and child, or either of them, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages, by way of fair compensation as they may think proportionate to the pecuniary loss resulting from such death, to the parties respectively for whom and for whose benefit such action shall be brought; provided that for the purposes of this chapter the reasonable expectation of pecuniary benefit, from the continuance of the life of the deceased, shall not be estimated for a period exceeding ten years. C. S. c. 86, s. 2.

3. Any expenses incurred or pecuniary loss sustained prior to his death by the person injured, and in consequence of such injury, and which would have been recoverable as damages by the person injured if death had not ensued, may also be recovered in such action, and such amount as may be found by the jury in respect thereof shall be held by the executor or the administrator as assets of the estate of the deceased. C. S. c. 86, s. 3.

4. The amount recovered in such action after deducting the costs and expenses in respect thereof not recovered from the defendant, shall be divided amongst the several parties for whose benefit the action is brought, whether wife, husband, parent, child, executor or administrator in such shares or amounts as the jury by their verdict shall find and direct. C. S. c. 86, s. 4.

5. Not more than one action shall lie for and in respect of the same subject matter of complaint under this chapter; and every such action shall be commenced within twelve calendar months after the death of such deceased person. C. S. c. 86, s. 5.

6. In every such action the plaintiff shall be required together with the declaration, to deliver to the defendant or his attorney, as the case may be, a full particular of the person or persons for whom or on whose behalf such action shall be brought, and of the manner in which the pecuniary loss to the different persons for whose benefit the action is brought is alleged to have arisen. C. S. c. 86, s. 6.

7. The word "parent" shall include father and mother and grandfather and grandmother, and the word "child" shall include son and daughter and grandson and granddaughter. C. S. c. 86, s. 7.

McGowan vs. Warner (1913), 41 N. B. R. 524, 14 E. L. R. 47; 15 D. L. R. 134.

Cause of Accident.—Although employer is guilty of negligence in not safeguarding dangerous machinery, yet, there can be no recovery of damages of servant caused by coming in contact with such machinery until plaintiff has connected such accident with defendant's negligence.

Wentzell vs. New Brunswick and Prince Edward Island Railway Co. (1915), 43 N. B. R. 475.

The plaintiff was not bound to elect at the trial whether he would proceed under the Workmen's Compensation Act or under the act "respecting compensation to relatives of persons killed by wrongful act, neglect or default." C. S. 1903, c. 79, but the Act could be brought and proceeded with under both Acts and the damages could be assessed under either Act as the evidence might warrant, and further, that by hiring as a brakeman on a railway an employee does not undertake to assume the risk of an accident caused by the neglect of the company to take all necessary and legal precautions for the protection of its employees, and the company is liable in damages for an accident caused by such neglect.

(McLeod, C. J., p. 494). "Referring to the claim that the plaintiff should elect whether she would proceed under chapter 79 of the Consolidated, 1903, or under the Workmen's Compensation Act, in my opinion the action can be brought under both Acts, and the damages assessed under either Act as the evidence may warrant. The practical difference between the two Acts is that under chapter 79 of the Consolidated Statutes, 1903, the defendant company would not be liable if the accident was caused through the negligence of a fellow servant. Under the Workmen's Compensation Act the defendant company would be liable, although the accident was caused by the negligence of a fellow servant, and there is some difference

in the assessment of damages, but that does not arise in the present case."

Murray et al executrices, etc. vs. Miramichi Pulp & Paper Co., 39 N. B. R., p. 44.

Lord Campbell's Act:—

A declaration by executrices under Lord Campbell's Act, C. S. 1903, c. 79, claiming damages for negligence causing death, and for expenses incurred and pecuniary loss sustained by deceased prior to his death, and stating that the action is brought for the benefit of deceased sisters is had on demurrer, sisters not being beneficiaries under the Act.

Barker, C. J.—It is clear that the right of action given by this Act, C. S. 1903, cap. 79, only arises where the action is for the benefit of the wife, husband, parent and child or either of them.

Collins (administrator, etc.), vs. The City of St. John. 38 N. B. R. 86.

In an action by a husband as administrator of his wife under the Act "respecting compensation to persons killed by wrongful act, negligence or default. (Cap. 79, C. S. N. B. 1903), damages based on a claim of \$15.00 per month for loss of prospective services of the wife for a period of five years may be recovered and are assessed on a proper principle.

In an action under the Statute the jury should be simply asked if the defendant was guilty of negligence causing the death, and if so, in what did such negligence consist? If irrelevant and unnecessary questions are asked, and the judge's charge in respect to them is not warranted by evidence relevant to the issue, a new trial will not be granted unless the effect thereof is to prejudice the minds of the jury as to the real question to be tried.

Runciman (administrator etc.), vs. The Star Line Steamship Co., 35 N. B. R. 123 (1900).

Lord Campbell's Act, Consolidated Statutes N. B., c. 86.

Action for causing death through negligence—pecuniary loss to surviving relative—evidence of—damages assessed on wrong principle—new trial.

“THE WORKMEN'S COMPENSATION FOR INJURIES ACT.”

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CHAPTER 34

4 *George V.*, 1914.

An Act to consolidate and amend Chapter 146 of the Consolidated Statutes, N. B. 1903, respecting compensation by employers for injuries to workmen.

Passed 16th April, 1914.

Be it enacted by the Lieutenant-Governor and Legislative Assembly, as follows:

1. Short Title.—This Act may be cited as "The Workmen's Compensation for Injuries Act." 3 Edward VII., c. 11, s. 1.

2. Meaning of Words.—In this Act, unless the context otherwise requires:

(1) "Superintendence" means such general superintendence over workmen as is exercised by a foreman or a person in a like position to a foreman, whether the person exercising superintendence is or is not ordinarily engaged in manual labour.

(2) "Employer" includes a body of persons, corporate or incorporate, and also the legal representatives of a deceased employer, and the person liable to pay compensation under section 4 of this Act. 3 Edward VII., c. 11, s. 2.

(3) "Workman" does not include a person whose employment is of a casual nature and otherwise than for the purpose of the employer's trade or business, or a domestic or menial servant, or a servant in husbandry, gardening or fruit growing, or in lumbering, or in driving, rafting or booming logs, or a person employed as a clerk in an office, or in a wholesale or retail shop or store, or a person employed as seaman or fisherman, when the personal injury caused to any such servant or person has been occasioned by, or has arisen from, or in the usual course of his work or employment as

a domestic or menial servant, or as a servant in husbandry, gardening or fruit growing, or in lumbering, or in driving, or in booming logs, or as a clerk in an office, or wholesale or retail shop or store, or as a seaman or fisherman, but save as aforesaid means any railway servant, ship-laborer, longshoreman, quarryman, miner, granite-worker, stone-cutter, pondman, and any person who, being a labourer, servant, journeyman, artificer, handicraftsman, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract was made before or after the passing of this Act, and whether such contract is expressed or implied, oral or in writing, and is a contract of service or a contract personally to execute any work or labour. 2 George V., c. 32, s. 1.

(4) "Railway Servant" means and includes a railway servant, tramway servant, and street railway servant. 3 Edward VII., c. 11, s. 2.

(5) "Dependents" means and includes only the workman's wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother or half-sister. 8 Edward VII., c. 31, s. 2.

Henry by next friend. Petitioner vs. Malcolm. Respondent, 39 N. B. R. p. 74.

Making a rock cutting in the construction of a Railway road bed is not quarrying within the meaning of the Workmen's Compensation Act, C. S. N. B. 1903, c. 146. Even though the rock removed is used to build the road level.

3. Injury Caused to Workman While in the Discharge of his duty.—3. Where in any employment to which this Act applies, personal injury by accident arising out of and in the course of the employment, is caused to a workman while in the discharge of his duty, his employer shall be liable to provide and pay compensation in the manner and to the extent provided under the terms of this Act.

Campbell vs. Donaldson, 40 N. B. R. 525. Applicable to prior section.

4. Who Deemed Employer.—(1) Where any work is being carried on under any contract and

(a) The person for whom the work, or any part thereof, is done, supplies any ways, works, machinery, gear, appliances, plant, scow, boat used for the purpose of executing the work and

(b) By reason of any defect in the condition or arrangement of such ways, works, machinery, gear, appliances, plant, scow, boat, vessel, building or premises, personal injury is caused to any workman employed by the contractor, or by any sub-contractor, the person for whom the work or that part of the work is done shall be liable to pay compensation for the injury as if the workman had been employed by him, and for that purpose be deemed to be the employer of the workman within the meaning of this Act; provided always, that any such contractor or sub-contractor shall be liable to pay compensation for the injury as if this section had not been recoverable for the same injury. 8 Edward VII., c. 31, s. 3.

(2) Nothing in this section contained shall affect any rights or liabilities of the person for whom the work is done, and the contractor or sub-contractor (if any) as between themselves. 3 Edward VII., c. 11, s. 4.

5. Cases to which this Act not Applicable.—A workman or his legal representatives, or any person entitled, in case of his death, shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases: 3 Edward VII., c. 2, s. 5.

(a) Where personal injury is caused to such workman by reason of his own wilful act, with intent to cause personal injury, or by reason of disobedience of rules, orders, or by-laws of the employer, contractor or sub-contractor; provided always, that printed or type-written copies of such rules, orders and by-laws have been posted and kept posted in a conspicuous position in the different places where the workmen carry on their work.

(b) Where personal injury is caused to such workman by reason of the malicious act or malicious neglect of a fellow workman, with intent to cause personal injury. 8 Edward VII., c. 31, s. 4.

(c) In any case where the workman knew of the defect or negligence which caused his injury and failed without reasonable excuse to give or cause to be given within a reasonable time, information thereof to the employer, or some person in charge of the particular work in connection with which the injury was sustained, or some person occupying the position of superintendent or foreman of the employer, unless he was aware that the employer or such person so in charge of the work or such superintendent or foreman already knew of the same defect or negligence provided, however, that such workman shall not, by reason only of his continuing in the employment of the employer, with knowledge of the defect, negligence, act or omission, be deemed to have voluntarily incurred the risk of the injury. 3 Edward VII., c. 11, s. 5.

(d) Where the workman is injured or killed through the negligence of a fellow workman, who at the time when such negligent act was committed was under the influence of intoxicating liquors, unless the workman so injured or killed, on becoming aware of the condition of his fellow workman, and within a reasonable time thereafter notified the foreman or any other person in charge of any work that his fellow workman was under the influence of intoxicating liquors as aforesaid. 8 Edward VII., c. 31, s. 4.

Wentzell Administratrix vs. N. B. and P. E. I. Rail. Co., 43 N. B. R. 475.

The Plaintiff was not bound to elect at the trial whether he would proceed under the Workmen's Compensation Act or under the Act "Respecting Compensation to Relatives of Persons killed by Wrongful Act, Neglect or Default," C. S. 1903, c. 79, but the action could be brought and proceeded with under both Acts and the damages could be assessed under either Act as the evidence might warrant, and further, that by hiring as a brakeman on a railway an employee does not undertake to assume the risk of an accident caused by the neglect of the company to take all necessary and legal precautions for the protection of its employees, and the company is liable in damages for an accident caused by such neglect.

6. Amount of Compensation Limited.—The amount of compensation under this Act shall be:

(1) Where death results from the injury—

(a) If the workman leaves any dependents who, at the time of his death, reside in Canada, and are partially or wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the

injury, but not exceeding in any case two thousand dollars (\$2,000); provided, that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer, but such compensation in no case to be less than one thousand five hundred dollars (\$1,500). 8 Edward VII., c. 31, s. 5; 2 George V., c. 32, s. 2.

(b) If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding seventy-five dollars (\$75.00). 8 Edward VII., c. 31, s. 5.

(2) Where the total or partial incapacity for work results from the injury, a weekly payment during the incapacity not to exceed seventy-five per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer: such weekly payment not to exceed twelve dollars (\$12.00) and in no case to be less than six dollars (\$6.00), per week; provided that:

(a) If the incapacity lasts less than two weeks, no compensation shall be payable in respect to the first week and

(b) If the incapacity lasts for more than one hundred (100) weeks, and is due to total blindness of both eyes, the loss of an arm or leg, or both, the total disability of a limb, or the loss of a hand or foot, or both, compensation shall be payable in respect thereof to not exceeding two hundred (200) weeks and

(c) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination once in each week after such accident by a duly qualified medical practitioner, provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same he shall not be entitled to compensation or to take any proceedings to recover compensation under this Act during the time covered by such refusal or obstruction. 8 Edward VII., c. 31, s. 5.

Henry, by next friend, Petitioner, vs. Malcolm, Respondent. 39 N. B. R. p. 74.

Under section 6 of the Act, damages may be assessed to an amount equal to the estimated earnings of the workman for three years preceding the injury although that amount should not exceed \$1,500.

This section fixes a limit but not a measure of damages.

7. Notice.—Subject to the provisions of Sections 10 and 11, an action under this Act for the recovery of compensation for an injury shall not be maintainable against the employer of the workman, unless notice that an injury has been sustained is given within two months, except in case where reasonable excuse is furnished for failure to give such notice within said time, and such notice is given as soon thereafter as possible, and unless the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months of the time of death, provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action, if the Judge is of opinion that there was reasonable excuse for such want of notice. 3 Edward VII., c. 11, s. 7; 2 George V., c. 32, s. 5.

8. Liability of Representatives of Deceased Employer.—

Notwithstanding anything in this Act contained, an action under any of the provisions of this Act to secure compensation for injuries to a workman may be maintained against the legal personal representatives of a deceased employer. 3 Edward VII., c. 11, s. 8.

9. Deduction from Compensation.—

There shall be deducted from any compensation awarded to any workman or representative of a workman, or persons claiming by, under or through a workman in respect to any cause of action arising under this Act, any penalty or damages, or part of a penalty or damages, which may, in pursuance of any other Act, either of the Parliament of Canada or of the Legislature of New Brunswick, have been paid to such workman, representatives or persons, in respect of the same cause of action, and where an action has been brought under this Act by any workman, or the representatives of any workman, or any person claiming by or under or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or damages or part of a penalty or damages under any such Act in respect to the same cause of action, such workman, representatives, or persons, shall not, so far as the Legislature of this Province has power to enact, be entitled thereafter to receive in respect to the same cause of action, any such penalty or damages under any such last mentioned Act. 3 Edward VII., c. 11, s. 9.

10. Service of Notice of Action.—

(1) Notice in respect of any inquiry under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or if there is more than one employer, upon one of such employers.

(2) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(3) The notice may also be served by post, by a registered letter, addressed to the person on whom it is to be served, at his last known place of residence, or place of business, and, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice it shall be sufficient proof that the notice was properly addressed and registered.

(4) Where the employer is a body of persons, corporate or incorporate, notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office of such employer, or, if there be more than one office, at any one of such offices.

(5) The want of insufficiency of the notice required by this section or by section 7 of this Act, shall not be a bar to the maintenance of an action for the recovery of compensation for the injury, if the Court or Judge before whom such action is tried, or, in case of appeal, if the Court hearing the appeal is of the opinion that there was reasonable excuse for the want or insufficiency, and that the defendant has not been thereby prejudiced in his defence.

(6) A notice under this section shall be deemed sufficient, if the form of the Schedule hereto, or to the like effect. 3 Edward VII., c. 11, s. 10.

11. Defence of Insufficiency of Notice.—If the defendant in any action against the employer for compensation for an injury sustained by a workman in the course of his employment, intends to rely for defence on the want of notice or the insufficiency of notice, or on the ground that he was not the employer of the workman injured, he shall, not less than seven days before the hearing of the action, give notice to the plaintiff of his intention to rely on that defence, and the Court may, in its discretion, and upon such terms and conditions as are just, order and allow an adjournment of the trial, for the purpose of enabling such notice to be given, and subject to any such terms and conditions, any notice given pursuant to and in compliance with the order in that behalf, shall, as to such action and for all purposes thereof, be held to be a notice given under and in accordance with sections 7 and 10 of this Act. 3 Edward VII., c. 11, s. 11.

12. Declaration, Form of.—In any action brought under this Act, the declaration shall state in ordinary language the cause of the injury and the date at which it was sustained, and the amount of compensation claimed, and where the injury of which the plaintiff complains has arisen by reason of the negligence, act or omission of any person in the service of the defendant, the declaration shall give a reliable description of such person. 3 Edward VII., c. 11, s. 12.

13. Contract or Agreement no Bar to Action—Exceptions.—No contract or agreement made or entered into by a workman shall be a bar or constitute any defence to an action for the recovery under this Act of compensation for an injury:

(a) Unless for such workman entering into or making such contract or agreement, there was other consideration than that of his being taken into or continued in the employment of the defendant; or,

(b) Unless such other consideration was, in the opinion of the Court or Judge before whom such action is tried, ample and adequate; or,

(c) Unless in the opinion of the Court or Judge such contract or agreement in view of such other consideration was not, on the part of the workman, improvident, but was just and reasonable; and the burden of proof in respect to such other consideration and of the same being ample and adequate, and that the contract was just and reasonable and was not improvident, shall, in all cases, rest upon the defendant. 3 Edward VII., c. 11, s. 13.

14. Civil Liability of Employer not Affected.—When the injury was caused by the personal negligence or wilful act of the employer (or of some person for whose act or default the employer is responsible) nothing in this Act shall affect any civil liability of the employer; but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him immediately preceding the passing of this Act, but the employer shall not be liable to pay compensation for an injury to a workman by accident arising out of and in the course of employment, both independently of and also under this Act. 3 Edward VII., c. 11, s. 14.

Murray, et al., Executrices, etc., vs. Miramichi Pulp & Paper Co.
39 N. B. R. 44.

The provisions of the W. C. Act, C. S. N. B. 1903, Cap. 146, place a workman who has been killed by the negligence of his employer

in the same position as a stranger, but gives his personal representatives no other or better right than they would have if he was a stranger.

15. Effect of Notice by Defendant of Admission of Facts.—

A defendant may, by notice to the opposite party, to be given or served at least six days before the day appointed for the trial of the action, admit the truth of any statement of his liability for any alleged negligence, act, or omission, as set forth or contained in the plaintiff's declaration of particulars of claim in the action, and after such notice given, the plaintiff shall not be allowed any expense thereafter incurred for the purpose of proving the matters so admitted. 3 Edward VII., c. 11, s. 15.

16. Public Holiday, Provision re.—Where the time for doing any act, taking any proceeding, or giving any notice under or required by this Act, expires on a holiday, such act or proceeding or notice shall, so far as regards the time of doing, taking or giving the same, be held to be duly and sufficiently done, taken or given, if done, taken or given on the next day thereafter which is not a holiday. 3 Edward VII., c. 11, s. 16.

17. Proceedings by Petition.—(1) If any person, or the representative of any person, are desirous of claiming compensation under this Act, he or they may, instead of bringing an action in the ordinary way, proceed summarily by petition to a Judge of the Supreme Court, which shall set forth in brief form the particulars of the claim and the circumstances upon which it is founded, and the Judge may, after such reasonable notice or notices to the party against whom compensation is sought, as he may deem proper, proceed in a summary way to hear such petitions on the merits, without regard to technicalities and shall decide the case as he may deem just and equitable, having regard to the principles laid down in, and the provisions of this Act. There shall be no appeal from the decision of such Judge, which shall be final and conclusive; provided the amount, if any, allowed to the claimant is not greater than is provided for by this Act. On the hearing of such petition the witnesses shall be examined under oath, which oath the Judge is hereby authorized to administer. He may also make orders for the attendance before him of such witness or witnesses as he may deem necessary; and any witness who has been served with such order, and who refuses or neglects to attend before the Judge and give evidence pursuant to such order, shall be guilty of contempt of court, and liable to be punished therefor for attachment. 7 Edward VII., c. 26, s. 2; 1 George V., c. 43, s. 1.

(2) Any order which the Judge may make for the payment of the amount to which he may find the claimant entitled, and costs, if he awards costs, or against the claimant for costs, in case the petition is dismissed, shall, upon being filed with the Registrar of the Supreme Court, have the same force and effect as a judgment in the Supreme Court, and execution may be issued thereon the same as upon such judgment. 7 Edward VII., c. 26, s. 2.

(a) In case the Judge shall make an order for a weekly payment during the incapacity of the workmen prospectively, an execution may be issued thereon for the amount due up to the time of the issue of said execution, and also for the aggregate amount of the weekly payments up to the end of the period for which the same shall have been prospectively awarded. The said aggregate amount shall be diminished by discounting the same at the rate of four per centum per annum for the period from the issue of such execution

to the date of the last payment so awarded. 1 George V., c. 43, s. 2.

18. Application of Foregoing Provisions to Weekly Payments.—The foregoing provisions of this Act shall apply to all weekly payments prospectively awarded by a Judge or by a jury under sub-section 2 of section 6 of this Act. 1 George V., c. 43, s. 3.

19. Compromise or Settlement.—When proceedings have been taken either by action or by petition to enforce payment of compensation under clause (a) of sub-section 1 of section 6 of this Act, any proposed settlement or compromise of such litigation, including costs proposed to be paid, shall be submitted for approval to a Judge of the Supreme Court, who shall advise the plaintiff or claimant as to the reasonableness of the same, and unless such proposed settlement or compromise be submitted as aforesaid, the claim for compensation shall not be deemed to be satisfied.

20. Summary Application on Neglect to make Weekly Payments.—In case the employer neglects to make the weekly payments provided to be made by sub-section 2 of section 6 of this Act, after demand upon him for the same, the workman may apply to any Judge of the King's Bench Division of the Supreme Court, or to any Judge of a County Court, who is hereby authorized to make an order for the payment of the weekly payment or payments in arrear, with or without costs, and such order shall have the same force and effect as a judgment in the Supreme Court, and execution may be issued thereon the same as upon such judgment, and the amount thereof may be levied and made by the Sheriff as in other cases.

21. Forms, Rules and Orders.—The said Registrar, as the case may be, shall make and establish any necessary forms, rules or orders for the better carrying out of the provisions of this Act, which forms, rules and orders shall be as valid as if enacted as part of this Act.

22. Costs.—The Judge may or may not award costs in either party, as to him may seem just, and if he allows costs, he shall tax and fix the amount thereof. In no case shall he award more than twenty-five dollars costs against the petitioner, or more than one hundred dollars costs against the respondent. 7 Edward VII., c. 26, s. 2.

23. Services of Notice and Other Documents.—In case the employer against whom a petition shall be presented under this Act shall not be a resident of the Province, all notices and other documents and proceedings may, by leave of the Judge, be served as provided by section 10 of this Act, on any ostensible agent or attorney of such employer who resides within the said Province. 1 George V., c. 43, s. 4.

24. Application of Order 48a—Rules S. C.—If the employer shall be a firm or person carrying on business in a name other than his own, whether within the Province or not, the provisions of Order

27. Repeal of Acts—Schedule of Forms.—The following Acts XLVIII^a of the Rules of the Supreme Court, 1909, shall apply, so far as the same may be capable of being applied to a petition and proceedings thereupon. 1 George V., c. 43, s. 5.

25. Application of Orders 31 and 32 Rules 5 C.—The provisions of Orders XXXI. and XXXII. of the Rules of the Supreme

Court, 1909, shall also apply to proceedings under a petition together with such other of the said rules as the Judge hearing the petition shall consider applicable to the circumstances of the case, and calculated to expedite and ensure justice therein. 1 George V., c. 43, s. 6; 2 George V., c. 32, s. 6.

26. Limitation of Compensation.—The provisions of this Act shall not entitle a workman to any greater compensation in respect of personal injury caused to such workman before the coming into force of this Act than that which hitherto would have been payable in respect thereof. 2 George V., c. 32, s. 7.

27. Repeal of Acts—Schedule of Forms.—The following Acts and parts of Acts are hereby repealed:

Chapter 146, Consolidated Statutes, 1903.

Chapter 26, 7 Edward VII., 1907.

Chapter 31, 8 Edward VII., 1908.

Chapter 43, 1 George V., 1911.

Chapter 32, 2 George V., 1912.

SCHEDULE.

FORM OF NOTICE.

(Section 7.)

To A. B. (here insert the employer's address) or to the Company
(as the case may be).

Take notice, that on the day of,
19...., C. D. (insert address of injured person), a workman in your
employment, sustained personal injury (add "of which he died," if
such is the case), and that such injury was caused by (state shortly
the cause of the injury, *e. g.*, the fall of a beam).

Dated, etc.

Yours, etc.

(Signature).

PROVINCE OF BRITISH COLUMBIA WORKMEN'S COMPENSATION ACT.

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CHAPTER 77.

An Act to provide for Compensation to Workmen for Injuries sustained and Industrial Diseases contracted in the Course of their Employment.

[31st May, 1916.]

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PRELIMINARY.

1. Short Title.—This Act may be cited as the “Workmen’s Compensation Act.”

2. Interpretation.—In this Act, unless the context otherwise requires,—

“Accident.”—“Accident” shall include a wilful and an intentional act, not being the act of the workman, and shall include a fortuitous event occasioned by a physical or natural cause:

“Accident Fund.”—“Accident Fund” shall mean the fund provided for the payment of compensation, outlays, and expenses under Part I.:

“Board.”—“Board” shall mean Workmen’s Compensation Board:

“Compensation.”—“Compensation” shall include medical aid, except where such interpretation is inconsistent with the context:

“Construction.”—“Constuctiron” shall include reconstruction, repair, alteration, and demolition:

“Dependents.”—“Dependents” shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death, or who but for the incapacity due to the accident would have been so dependent; and no person shall be excluded as a dependent because he is a non-resident alien:

“Employer.”—“Employer” shall include every person having in his service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry, and in respect of any industry within the scope of Part I. includes municipal corporations and boards and commissions having the management of any work or service operated for a municipal corporation:

“Employment.”—“Employment,” when used in Part I., means and refers to the whole or any part of any establishment, undertaking, trade, or business within the scope of that Part, and in the case of any industry not as a whole within the scope of Part I. includes any department or part of such industry as would if carried on separately be within the scope of Part I.:

“Industrial Disease.”—“Industrial disease” shall mean any of the diseases mentioned in the Schedule, and any other disease which by the regulations is declared to be an industrial disease:

“Industry.”—“Industry” shall include establishment, undertaking, work, trade and business:

"Invalid."—"Invalid" shall mean physically or mentally incapable of earning:

"Medical Aid."—"Medical aid," when used in Part I., shall mean and include the several matters and things which the Board under the provisions of section 21 is empowered to provide for injured workmen:

"Member of the Family."—"Member of the family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, and half-sister, and a person who stood in loco parentis to the workman or to whom the workman stood in loco parentis, whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents:

"Outworker."—"Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials:

"Person"—"Person" shall include females as well as males:

"Physician."—"Physician" shall mean and include any person registered under the "Medical Act":

"Regulations."—"Regulations" shall mean and include rules and regulations made by the Board under the authority of this Act:

"Workman."—"Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise; and in respect of the industry of mining shall include a person while he is actually engaged in taking or attending a course of training or instruction in mine-rescue work under the direction or with the written approval of an employer in whose employment the person is employed as a workman in that industry, or while with the knowledge and consent of any employer in that industry, either express or implied, he is actually engaged in rescuing or protecting or attempting to rescue or protect life or property in the case of an explosion or accident which endangers either life or property in a mine, and this irrespective of the fact whether during the time of his being so engaged such person is entitled to receive wages from such employer, or from any employer, or is performing such work or service as a volunteer; and, further, in respect to the industry of mining, shall include a person while he is engaged as a member of the inspection committee, appointed or elected by the workmen in the mine, or in default of such appointment or election by the workmen, if appointed by the Chief Inspector of Mines, to inspect the mine on behalf of the workmen, as required by General Rule 37, section 91 of the "Coal-mines Regulation Act," chapter 160 of the "Revised Statutes of British Columbia, 1911."

3. This Act is divided into three parts, relating to the following subjects:

Division of Act.

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PART I.**Compensation to Workmen and Dependents.****DIVISION (1).—SCOPE OF THIS PART.**

4. Application of Part I.—This Part shall apply to employers and workmen in or about the industries of lumbering, mining, quarrying, excavation, well-drilling, fishing, manufacturing, printing, construction, building, engineering, transportation; operation of railways or tramways; operation of telegraph or telephone systems; operation of lumber, wood, or coal yards; operation of steam-heating plants, power plants, electric-light and electric-power plants or systems, gasworks, waterworks, or sewers; operation of municipal police forces or municipal fire departments; operation of theatre stages or kinematographs; operation of power laundries, stockyards, packing-houses, refrigerating or cold-storage plants, docks, wharves, warehouses, freight and passenger elevators, grain-elevators, boats, ships, tugs, ferries, or dredges; navigation, stevedoring, teaming, horse-shoeing, scavenging, street-cleaning, painting, decorating, renovating, dyeing, and cleaning; and in and about any occupation incidental to or immediately connected with any of the industries enumerated in this section:

Provided that, subject to section 5, this Part shall not apply to the following:—

- (a) Persons engaged as travelling salesmen or in office or other clerical work, and not exposed to the hazards incident to the nature of the work carried on in the industry:
- (b) Persons whose employment is of a casual nature, and who are employed otherwise than for the purposes of the employer's trade or business:
- (c) Outworkers; or
- (d) Members of the family of the employer.

5. Admission of Industries.—(1)—Any industry or workman not within the scope of this Part may, on the application of the employer, be admitted by the Board as being within the scope of this Part, and upon such admission the workman or industry shall be deemed to be within the scope of this Part.

(2.) **Admission of Employer.**—Any employer in an industry within the scope of this Part may be admitted by the Board as being entitled for himself and his dependents to the same compensation as if the employer were a workman within the scope of this Part.

(3) **Manner of Admission.**—Admissions under this section may be made from time to time in such manner and form and subject to such terms and conditions and for such period as the Board may deem adequate and proper.

PART I., DIVISION (2).—COMPENSATION.

6. Compensation in Cases of Industrial Accident.—(1.) Where, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of the employment is caused to a workman, compensation as provided by this Part shall be paid by the Board out of the Accident Fund.

(2) **Waiting Period of Three Days.**—If the injury does not wholly disable the workman longer than the period of three days, exclusive of any holiday upon which the workman would not in the usual course of his employment have worked, from earning wages at the work at which he was employed, no compensation, other than medical aid, shall be payable under this Part. If the injury disables the workman longer than the period of three days, no compensation, other than medical aid, shall be payable for the first three days of disability reckoned exclusively of any such holiday.

(3) **Effect of Serious and Wilful Misconduct.**—Where the injury is attributable solely to the serious and wilful misconduct of the workman, no compensation shall be payable unless the injury results in death or serious and permanent disablement.

(4) **Presumptions.**—Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

7. Compensation in Cases of Industrial Diseases.—(1) Where—

- (a) A workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed; or
- (b) The death of a workman is caused by an industrial disease; and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement, whether under one or more employments, the workman or his dependents shall be entitled to compensation under this Part as if the disease were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—
- (c) The disablement shall be treated as the happening of the accident; and
- (d) If the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable.

(2) **Presumptions.**—If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of the Schedule hereto, and the disease contracted is the disease in the first column of the Schedule set oppo-

site to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

(3) **Reports of Industrial Diseases.**—The Board may by the regulations require every physician treating a patient who is suffering from any industrial disease to report to the Board such information relating thereto as it may require.

(4) **Certain Rights Not Affected.**—Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply, if the disease is the result of an injury in respect of which he is entitled to compensation under this Part.

S. Accidents Happening Out of Province.—Where an accident happens while the workman is employed elsewhere than in the Province, which would entitle him or his dependents to compensation under this Part if it had happened in the Province, the workman or his dependents shall be entitled to compensation under this Part:—

(a) If the place or chief place of business of the employer is situate in the Province, and the residence and the usual place of employment of the workman are in the Province, and his employment out of the Province has immediately followed his employment by the same employer within the Province and has lasted less than six months; or

(b) If the accident happens on a steamboat, ship, or vessel, or on a railway, and the workman is a resident of the Province, and the nature of the employment is such that in the course of the work or service which the workman performs it is required to be performed both within and without the Province.

(2) **No Compensation Payable in Certain Cases.**—Except as provided by subsection (1), no compensation shall be payable under this Part where the accident to the workman happens elsewhere than in the Province.

(3) **Liability of Employer.**—In any case where compensation is payable in respect of an accident happening elsewhere than in the Province, if the employer has not fully contributed to the Accident Fund in respect of all the wages of workmen in his employ who are engaged in the employment or work in which the accident happens, the employer shall pay to the Board the full amount of capitalized value, as determined by the Board, of the compensation payable in respect of the accident, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

(4) **Board May Relieve from Liability.**—The Board, if satisfied that the default of the employer in respect of his contribution to the Accident Fund was excusable, may in any case relieve the employer in whole or in part from liability under subsection (3).

9. Workman to Elect as to Compensation.—(1) Where by the law of the country or place in which the accident happens the workman or his dependents are entitled to compensation in respect of it, they shall be bound to elect whether they will claim

compensation under the law of such country or place or under this Part, and to give notice of such election; and if such election is not made and notice given it shall be presumed that they have elected not to claim compensation under this Part.

(2) **Notice of Election.**—Notice of the election shall be given to the Board within three months after the happening of the accident, or, in case it results in death, within three months after the death, or within such longer period as either before or after the expiration of such three months the Board may allow.

10. Workman May Bring Action Against Person Other Than Employer.—(1) Where an accident happens to a workman in the course of his employment in such circumstances as entitle him or his dependents to an action against some person other than his employer, the workman or his dependents, if entitled to compensation under this Part, may claim such compensation or may bring such action.

(2) **Entitled to Difference Between Amount Collected and Compensation.**—If the workman or his dependents bring such action and less is recovered and collected than the amount of the compensation to which the workman or dependents would be entitled under this Part, the workman or dependents shall be entitled to compensation under this Part to the extent of the amount of such difference.

(3) **Board Subrogated to Workman's Rights.**—If any such workman or dependent makes an application to the Board claiming compensation under this Part, the Board shall be subrogated to the rights of the workman or dependent as against such other person for the whole or any outstanding part of the claim of the workman or dependent against such other person.

(4) **Board May Award Compensation in Lieu of Action and Charge It Against Another Class.**—In any case within the provisions of subsection (1), neither the workman nor his dependents nor the employer of such workman shall have any right of action in respect of such accident against an employer in any industry within the scope of this Part; and in any such case where it appears to the satisfaction of the Board that a workman of an employer in any class is injured owing to the negligence of an employer or of the workman of an employer in another class within the scope of this Part, the Board may direct that the compensation awarded in such case shall be charged against the last-mentioned class.

11. Provisions of This Part in Lieu of All Actions.—(1) The provisions of this Part shall be in lieu of all rights of action to which a workman or his dependents are entitled, either at common law or by any Statute, against the employer of such workman for or by reason of any accident which happens to him arising out of and in the course of his employment, and no action against the employer shall lie in respect of such accident.

(2) **Workman Who Is a Minor to Be Sui Juris.**—A workman under the age of twenty-one years, and working at an age and in an employment permitted under the laws of the Province, shall be deemed sui juris for the purpose of this Part, and no other person shall have any cause of action or right to compensation for an injury to such workman except as expressly provided in this Part.

(3) **Stay of Action Improperly Brought.**—Where an action in respect of an injury is brought against an employer by a workman or a dependent, the Board shall have jurisdiction upon the application of any party to the action to adjudicate and determine whether the action is one the right to bring which is taken away by this Part, and such adjudication and determination shall be final and conclusive; and if the Board determines that the action is one the right to bring which is taken away by this Part the action shall be for ever stayed.

12. Compensation Cannot Be Waived.—It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependents are or may become entitled under this Part, and every agreement to that end shall be absolutely void.

13. No Contributions from Workmen.—(1) Subject to the provisions of subsection (1) of section 30 in respect of medical aid, it shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of any of his workmen any part of any sum which the employer is or may become liable to pay into the Accident Fund or otherwise under this Part, or to require or to permit any of his workmen to contribute in any manner towards indemnifying the employer against any liability which he has incurred or may incur under this Part.

(2) **Contravention of Subsection (1) an Offence.**—Every person who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Part, and shall also be liable to repay to the workman any sum which has been so deducted from his wages or which he has been required or permitted to pay in contravention of subsection (1).

14. Compensation Not Assignable or Liable to Attachment.—No sum payable as compensation or by way of commutation of any periodical payment in respect of it shall be capable of being assigned, charged, or attached, nor shall it pass by operation of law except to a personal representative, nor shall any claim be set off against it.

PART I., DIVISION (3)—SCALE OF COMPENSATION.

15. Burial Expenses.—Where death results from the injury, the necessary expenses of the burial of the workman, not exceeding the sum of seventy-five dollars, shall be paid in addition to all other compensation payable under this section.

(2) **Compensation to Dependents.**—Where death results from the injury, compensation shall be paid to the dependents of the deceased workman as follows:—

- (a) Where the dependent is a widow or an invalid widower without any dependent children, a monthly payment of twenty dollars during the life of such surviving spouse;
- (b) Where the dependents are a widow or an invalid widower and one or more children, a monthly payment of twenty dollars, with an additional monthly payment of five dollars for each child under the age of sixteen years and for each invalid child over that age, not exceeding in the whole forty dollars:

- (c) Where the dependents are children without any widow or invalid widower, a monthly payment of ten dollars to each child under the age of sixteen years and to each invalid child over that age, not exceeding in the whole forty dollars; and
- (d) Where there is no widow, invalid widower, child under the age of sixteen years, or invalid child over that age as a dependent, but the workman leaves other dependents, a sum reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, to be determined by the Board, but not exceeding twenty dollars per month to a parent or parents, and not exceeding in the whole thirty dollars per month:
- (e) In any case within the provisions of clause (a) or (c), if the workman leaves a parent or parents who are dependents, the Board may in its discretion award to the parent or parents a sum to be determined by the Board, but not exceeding twenty dollars per month, and not exceeding with the compensation otherwise payable under this subsection forty dollars per month.

(3) **Allotment of Compensation.**—Where there are both total and partial dependents, the compensation may be allotted partly to the total and partly to the partial dependents.

(4) **Duration of Payments.**—The payments provided under clause (d) of subsection (2) shall continue only so long as, in the opinion of the Board, it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependents. ..

(5) **Payments to Children.**—Payments in respect of a child under the age of sixteen years shall cease when the child attains the age of sixteen years or dies, provided that in case the child at the time of attaining the age of sixteen years is an invalid the payments shall continue until the child ceases to be an invalid. Payments in respect of an invalid child over the age of sixteen years shall cease when the child ceases to be an invalid or dies.

(6) **Readjustment of Payments.**—Where a payment to any one of a number of dependents ceases, the Board may in its discretion readjust the payments to the remaining dependents so that the remaining dependents shall thereafter be entitled to receive the same compensation as though they had been the only dependents at the time of the death of the workman.

16. Marriage of Widow.—(1) If a dependent widow marries, the monthly payments to her shall cease, but she shall be entitled in lieu of them to a sum equal to the monthly payments for two years.

(2) **Exception.**—Subsection (1) shall not apply to payments to a widow in respect of a child.

17. Permanent Total Disability.—(1) Where permanent total disability results from the injury, the compensation shall be a periodical payment to the injured workman equal in amount to fifty-five per centum of his average earnings, and shall be payable during the lifetime of the workman.

(2) **Minimum Compensation of \$5 per Week.**—The compensation awarded under this section shall not be less than an amount

equal to five dollars per week, unless the workman's average earnings are less than five dollars per week, in which case he shall receive compensation in an amount equal to his average earnings.

18. Permanent Partial Disability.—(1) Where permanent partial disability results from the injury, the compensation shall be a periodical payment to the injured workman equal in amount to fifty-five per centum of the difference between the average earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident, and the compensation shall be payable during the lifetime of the workman.

(2) **Facial Disfigurement.**—Notwithstanding the provisions of subsection (1), where in the circumstances the amount which the workman was able to earn before the accident has not been substantially diminished, the Board may, in case the workman is seriously and permanently disfigured about the face or head, recognize an impairment of earning capacity, and may allow a lump sum in compensation.

19. Temporary Total Disability.—(1) Where temporary total disability results from the injury, the compensation shall be the same as that prescribed by section 17, but shall be payable only so long as the disability lasts.

(2) **Minimum Compensation of \$5 Per Week.**—The compensation awarded under this section shall not be less than an amount equal to five dollars per week, unless the workman's average earnings are less than five dollars per week, in which case he shall receive compensation in an amount equal to his average earnings.

20. Temporary Partial Disability.—Where temporary partial disability results from the injury, the compensation shall be the same as that prescribed by subsection (1) of section 18, but shall be payable only so long as the disability lasts.

21. Medical Aid.—(1) In addition to the other compensation provided by this Part, the Board shall have authority to furnish or provide for the injured workman such medical, surgical, and hospital treatment, transportation, nursing, medicines, crutches, and apparatus, including artificial members, as it may deem reasonably necessary at the time of the injury, and thereafter during the disability to cure and relieve from the effects of the injury, and the Board shall have full power to adopt rules and regulations with respect to furnishing medical aid to injured workmen entitled thereto and for the payment thereof.

(2) **Emergency Treatment.**—Where in a case of emergency, or for other justifiable cause, a physician other than the one provided by the Board is called in to treat the injured workman, and if the Board finds there was such justifiable cause and that the charge for the services is reasonable, the cost of the services shall be paid by the Board.

(3) **Employers May be Authorized to Provide Medical Aid.**—The Board may in its discretion authorize employers to furnish or provide medical aid at the expense of the Board and upon terms fixed by it.

(4) **Existing Plans of Medical Aid May Be Continued.**—Any plan for providing medical aid in force between an employer and his workmen or otherwise available to the workmen at the time of the coming into force of this Part, or which is hereafter put into force or made available to the workmen, and which in the opinion of the Board, after investigation of the facts, is found on the whole to be not less efficient in the interests both of the employer and of the general body of workmen than the provisions for medical aid contained in this section, may by order of the Board, subject to such conditions as the Board may require, be declared to be a plan approved by the Board. So long as the order of the Board approving the plan is in force and unrevoked the provisions of subsections (1), (2), and (3) and of subsection (1) of section 30 shall not apply to any of the workmen in any employment embraced in such plan, and during the like period the provisions of section 12 of the "Master and Servant Act" shall not apply in respect of any such workmen.

(5) **Board to Have Supervision of All Medical Aid.**—Medical aid furnished or provided under any of the preceding subsections of this section shall at all times be subject to the supervision and control of the Board; and the Board shall have full power and authority to contract with doctors, nurses, hospitals, and other institutions for any medical aid required, and to agree on a scale of fees or remuneration for such medical aid.

(6) **Case of Workmen Under Sick Mariners' Fund.**—In the case of any workman employed as a master, mate, engineer, seaman, sailor, steward, fireman, or in any other capacity on board of any vessel on which duty has been paid or is payable for the purposes of the Sick Mariners' Fund under Part V. of the "Canadian Shipping Act," being chapter 113 of the "Revised Statutes of Canada, 1906," the provisions of subsections (1) to (5) shall not apply to such workman during the period in respect of which such duty has been paid or is payable.

(7) **Medical Aid.**—Without in any way limiting the power of the Board under this section to supervise and provide for the furnishing of medical aid in every case where the Board is of the opinion that the exercise of such power is expedient, the Board shall under this section, in all cases where the circumstances, in the opinion of the Board, do not require the exercise of such power in order to procure prompt and efficient medical aid for the injured workman, permit medical aid to be administered, so far as the selection of a physician is concerned, by the physician who may be selected or employed by the injured workman or his employer, to the end that so far as possible all competent physicians without distinction may be employed and be available to injured workmen.

22. Average Earnings.—(1) The average earnings and earning capacity of a workman shall be determined with reference to the average earnings and earning capacity at the time of the accident, and may be calculated upon the daily, weekly, or monthly wages or other regular remuneration which the workman was receiving at the time of the accident, or upon the average yearly earnings of the workman for one or more years prior to the accident, or upon the probable yearly earning capacity of the workman at the time of the accident as may appear to the Board best to represent

the actual loss of earnings suffered by the workman by reason of the injury, but not so as in any case to exceed the rate of two thousand dollars per year.

(2) **Minors.** Where the workman was at the date of the accident under twenty-one years of age, and it is established to the satisfaction of the Board that under normal conditions his wages would probably increase, the fact shall be considered in arriving at his average earnings or earning capacity.

23. Deductions from Compensation in Certain Cases.—In fixing the amount of a periodical payment of compensation, regard shall be had to any payment, allowance, or benefit which the workman may receive from his employer during the period of his disability, including any pension, gratuity, or other allowance provided wholly at the expense of the employer; and any sum deducted under this section from the compensation otherwise payable may be paid to the employer out of the Accident Fund.

24. Payment of Compensation.—(1) Payments of compensation shall be made periodically at such times and in such manner and form as the Board may deem advisable, and in the case of minors or persons of unsound mind, payments may be made to such persons as, in the opinion of the Board, are best qualified in all the circumstances to administer such payments, whether or not the person to whom the payment is made is the legal guardian of such minor or person of unsound mind.

(2) **Commutation of Payments.**—The Board may, in its discretion,—

(a) Commute the whole or any part of the periodical payments due or payable to the injured workman or any dependent to one or more lump sum payments to be applied as directed by the Board; and may

(b) Divide into periodical payments any compensation payable in a lump sum.

(3) **Commutation of Payments on Application.**—In case of death or permanent total disability or in case of permanent partial disability where the impairment of the earning capacity of the workman exceeds ten per cent. of his earning capacity at the time of the accident, no commutation of periodical payments shall be made under subsection (2) except upon the application of and at an amount agreed to by the dependent or workman entitled to such payments.

PART I., DIVISION (4)—ACCIDENT FUND AND ASSESSMENTS.

25. Accident Fund and Classification of Industries.—For the purpose of assessment in order to create and maintain a fund, to be called the "Accident Fund," for the payment of the compensation, outlays, and expenses under this Part, all industries within the scope of this Part shall, subject to sections 26 and 27, be divided into the following classes:—

Class 1.—Lumbering, logging, sawmills, manufacture of pulp or paper:

Class 2.—Wood-working, planing-mills, furniture-factories, cooperage, manufacture of vehicles:

Class 3.—Coal-mining:

Class 4.—Mining (other than coal); reduction of ores and smelting, quarrying, manufacture of brick or lime:

Class 5.—Manufacture of iron and steel, and iron, steel, and metal products:

Class 6.—Manufacture of compounds, paints, chemicals, liquors, or beverages, manufacture of leather, leather goods, rubber, or rubber goods, flour-milling, handling of grain, canning, packing, or manufacture of food products, manufacture of cloth, textiles, and clothing, printing, lithographing, engraving, manufacture of stationery, teaming, cartage, warehousing, and storage:

Class 7.—Construction of buildings and wooden ships, masonry, structural carpentry, plumbing and painting, steel erection, steel-bridge building, steelship building, road-making, sewer-construction, excavation, well-drilling, construction of irrigation-works, subaqueous construction, dredging, pile-driving, fishing:

Class 8.—Construction and operation of electric railways, electric light and power plants, lines, and appliances, construction and operation of telegraph and telephone systems, construction and operation of steam railways:-

Class 9.—Navigation and stevedoring:

Class 10.—Canadian Pacific Railway Company, Canadian Pacific Ocean Services, Limited; Esquimalt and Nanaimo Railway Company, Kettle Valley Railway Company, Dominion Express Company, Consolidated Mining and Smelting Company of Canada, Limited; West Kootenay Power and Light Company, Limited:

Class 11.—Grand Trunk Pacific Railway Company, The Grand Trunk Pacific Coast Steamship Company, Limited; Grand Trunk Pacific Telegraph Company, Canadian Express Company, The Grand Trunk Pacific Development Company, Limited:

Class 12.—Canadian Northern Pacific Railway Company, The Great North Western Telegraph Company of Canada, Canadian Northern Express Company.

26. Creation and Rearrangement of Classes.—(1) The Board may, by the regulations,—

- (a) Create new classes in addition to those mentioned in section 25:
- (b) Consolidate or rearrange from time to time any of the existing classes; and may
- (c) Withdraw from a class any industry included therein and transfer it wholly or in part to any other class, or form it into a separate class.

(2) **Adjustment of Class Funds.**—In case of any rearrangement of the classes, or the withdrawal of an industry from any class, the Board may make such adjustment and disposition of the funds, reserves, and accounts of the classes affected as may be deemed just and expedient.

27. Every Industry to Be Assigned to Proper Class.—The Board shall assign every industry within the scope of this Part to its proper class; and where any industry includes several departments assignable to different classes, the Board may either assign such industry to the class of its principal or chief department, or may, for the purpose of this Part, divide such industry into two or more departments, assigning each of such departments to its proper class.

28. Employer to Furnish Estimates of Payrolls.—(1) Every employer shall, on or before the first day of October, 1916, or when-

ever thereafter he becomes an employer within the meaning of this Part, and at such other times as may be required by the regulations or by the Board, cause to be furnished to the Board an estimate of the probable amount of the pay-roll of each of his industries within the scope of this Part for the year next following, together with such further and other information as may be required by the Board for the purpose of assigning each industry to the proper class and of making the assessments hereunder; and every employer shall, at or after the close of each calendar year, and at such other times as may be required by the Board, furnish certified copies or reports of his pay-rolls, verified by statutory declaration.

(2) **Method of Computing Pay-roll.**—In computing the amount of the pay-roll of any industry for the purpose of assessment, regard shall be had only to such portion of the pay-roll as represents workmen and employment within the scope of this Part; and where the wages of any workman exceed the rate of two thousand dollars per year, a deduction shall be made in respect of the excess.

(3) **Non-compliance with Subsection (1) an Offence.**—If an employer does not comply with the provisions of subsection (1), or if any statement made in pursuance of its provisions is not a true and accurate statement of any of the matters required to be set forth in it, the employer for every such non-compliance and for every such statement shall be guilty of an offence against this Part.

29. Assessments to Provide Accident Fund.—(1) For the purpose of creating and maintaining an adequate Accident Fund, the Board shall every year assess and levy upon and collect from the employers in each class by an assessment or by assessments made from time to time rated upon the pay-roll, or in such other manner as the Board may deem proper, sufficient funds, according to an estimate to be made by the Board,—

- (a) To provide in connection with section 30 a special fund to meet the cost of medical aid;
- (b) To meet all other amounts payable from the Accident Fund under this Part during the year;
- (c) To provide a reserve by way of a contingent fund in aid of industries or classes which may become depleted or extinguished;
- (d) To provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all accidents which occur during the year; and
- (e) To provide a reserve fund to be used to meet the loss arising from any disaster or other circumstance which, in the opinion of the Board, would unfairly burden the employers in any class.

(2) **Assessments, How Made.**—Assessments may be made in such manner and form and by such procedure as the Board may deem adequate and expedient, and may be general as applicable to any class or sub-class, or special as applicable to any industry or part or department of an industry.

(3) **Assessments, When Collected.**—Assessments may, wherever it is deemed expedient, be collected in half-yearly, quarterly, or monthly instalments, or otherwise; and where it appears that the funds in any class are sufficient for the time being, any instalment may be abated or its collection deferred.

(4) **Additional Assessments.**—In case the estimated assessments in any class prove insufficient, the Board may make such further assessments and levies as may be necessary, or the Board may temporarily advance the amount of any deficiency out of any reserve provided for that purpose, and add such amount of any subsequent assessments.

(5) **Notice of Assessments.**—The Board shall give notice to each assessment due from time to time in respect of his industry and the time when the same is payable. The notice may be sent by post to the employer, and shall be deemed to be given to him on the day on which the notice is posted.

30. Contribution from Workmen Towards Medical Aid.—(1) Every employer who is required to contribute to the Accident Fund by way of assessment under this Part is hereby authorized and required to retain from the moneys earned by each workman in his employment the sum of one cent for each day or part of day the workman is employed as a contribution toward the cost of medical aid, and to pay the sum so retained to the Board from time to time at the time each assessment is due and payable by the employer.

(2) **Employers to Be Assessed for Additional Amounts Required.**—The moneys received by the Board under subsection (1) shall form part of the Accident Fund, and shall constitute a special fund to be used only in defraying the cost of medical aid. Such additional amounts as are required from time to time to meet the cost of medical aid shall be provided by the Board by assessment upon employers generally in all industries within the scope of this Part, except in respect of employments embraced in any plan for providing medical aid approved by the Board under subsection (4) of section 21.

(3) **Case of Workmen Under Sick Mariners' Fund.**—In the case of any workman employed as a master, mate, engineer, seaman, sailor, steward, fireman, or in any other capacity on board of any vessel on which duty has been paid for the purposes of the Sick Mariners' Fund under Part V. of the "Canada Shipping Act," being chapter 113 of the "Revised Statutes of Canada, 1906," the provisions of subsections (1) and (2) of this section shall not apply to such workman during the period in respect of which such duty has been paid or is payable.

31. Contribution from Province to Accident Fund.—To assist in defraying the expenses incurred in the administration of this Part, such annual sum as the Lieutenant-Governor in Council may direct, not exceeding fifty thousand dollars, shall be paid out of the Consolidated Revenue Fund to the Board to form part of the Accident Fund.

32. Board to Classify Rates.—The Board shall establish such sub-classifications, differentials, and proportions in the rates as between the different kinds of employment in the same class as

may be deemed just; and where in the opinion of the Board any particular industry is shown to be so circumstanced or conducted that the hazard differs from the average of the class or sub-class to which the industry is assigned, the Board shall confer or impose upon such industry a special rate, differential, or assessment to correspond with the relative hazard of that industry; and for such purposes may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of the individual plant or undertaking of each employer.

33. Temporary Industries.—(1) Where an employer engages in any of the industries within the scope of this Part and has not been assessed in respect of it, the Board, if it is of opinion that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the Board of a sum sufficient to pay the assessment for which the employer would be liable if the industry had been in existence when the next preceding assessment was made.

(2) **Default Constituted an Offence.**—Every employer who makes default in complying with any requirement of the Board under subsection (1) shall be guilty of an offence against this Part.

34. Collection of Assessments by Suit.—(1) If any assessment or part thereof is not duly paid in accordance with the terms of the assessment and levy, the Board shall have a right of action against the defaulting employer in respect of the amount unpaid, together with costs of such action.

(2) **Summary Proceeding Without Suit.**—Where default is made in the payment of any assessment, or any part of it, the Board may issue its certificate stating that the assessment was made, the amount remaining unpaid on account of it, and the person by whom it was payable, and such certificate, or a copy of it certified by the Secretary under the seal of the Board to be a true copy, may be filed with any District Registrar of the Supreme Court, and when so filed shall become an order of that Court and may be enforced as a judgment of the Court against such person for the amount mentioned in the certificate.

35. Collection of Moneys Contributed Towards Medical Aid.—The Board shall have the like powers and be entitled to the like remedies of enforcing payment of any sum which an employer is required to pay to the Board under subsection (1) of section 30 as it possesses or is entitled to in respect of assessments.

36. Penalty for Default in Payment of Assessments.—(1) If any sum which an employer is required to pay to the Board under subsection (1) of section 30 or if any assessment levied under any provision of this Part is not paid at the time when it becomes payable, the defaulting employer shall be liable to pay and shall pay as a penalty for his default such a percentage upon the amount unpaid as may be prescribed by the regulations or may be determined by the Board.

(2) **Liability to Pay Capitalized Value of the Compensation Accruing.**—Any employer who refuses or neglects to make or transmit any pay-roll return or other statement required to be furnished by him under the provisions of subsection (1) of section 28, or who refuses or neglects to pay any assessment, or the pro-

visional amount of any assessment, or any instalment or part thereof, shall, in addition to any penalty or other liability to which he may be subject, pay to the Board the full amount or capitalized value, as determined by the Board, of the compensation payable in respect of any accident to a workman in his employ which happens during the period of such default, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

(3) **Board May Relieve from Penalty.**—The Board, if satisfied that such default was excusable, may in any case relieve such employer in whole or in part from liability under this section.

37. Separate Accounts to Be Kept for Each Class.—Separate accounts shall be kept of the amounts collected and expended in respect of every class and of every fund set aside by way of reserve or as a special fund for any purpose, but for the purpose of paying compensation the Accident Fund shall, nevertheless, be deemed one and indivisible.

38. Annual Adjustments of Assessments.—(1) On or before the first day of March in each year the amount of the assessment for the preceding calendar year shall be adjusted upon the actual requirements of the class and upon the correctly ascertained pay-roll of each industry, and the employer shall forthwith make up and pay to the Board any deficiency, or the Board shall refund to the employer any surplus, or credit the same upon the succeeding assessment as the case may require.

(2) **Adjustment in Case of Change of Ownership.**—Where in any industry a change of ownership or employership has occurred, the Board may levy any part of such deficiency on either or any of the successive owners or employers, or pay or credit to any one or more of such owners such surplus as the case may require, but as between or amongst such successive owners the assessments in respect of such employment shall, in the absence of an agreement between the respective owners or employers determining the same, be apportionable, as nearly as may be, in accordance with the proportions of the pay-rolls of the respective periods of ownership or employment.

39. Collection of Assessments from Contractors.—Where any work within the scope of this Part is performed under contract for any municipal corporation, or for any board or commission having the management of any work or service operated for a municipal corporation, any assessment in respect of such work may be paid by such corporation, board, or commission, as the case may be, and the amount of such assessment deducted from any moneys due the contractor in respect of such work.

40. Contractor and Person for Whom Work Done Both Made Liable.—(1) Where any work within the scope of this Part is undertaken for any person by a contractor, both the contractor and the person for whom such work is undertaken shall be liable for the amount of any assessment in respect thereof, and such assessment may be levied upon and collected from either of them, or partly from one and partly from the other: Provided that in the absence of any term in the contract to the contrary the contractor shall, as between himself and the person for whom the work is performed, be primarily liable for the amount of such assessment.

(2) **Contractor and Sub-contractor Both Made Liable.**—Where any work within the scope of this Part is performed under sub-contract, both the contractor and the sub-contractor shall be liable for the amount of the assessments in respect of such work; any such assessments may be levied upon and collected from either, or partly from one and partly from the other: Provided that in the absence of any term in the sub-contract to the contrary the sub-contractor shall, as between himself and the contractor, be primarily liable for such assessments.

41. Assessments to Rank as Preferred Debts.—There shall be included among the debts which, in the distribution of the property or assets—

- (a) Under the "Creditors' Trust Deeds Act" in the case of an assignment;
- (b) Under the "Administration Act" in the case of death; or
- (c) Under the "Companies Act" in the case of a company being wound up.—

are to be paid in priority to all other debts, the amount of any assessment the liability wherefor accrued before the date of the assignment or death or before the date of the commencement of the winding-up, and the said Acts shall respectively have effect accordingly.

PART I. DIVISION (5)—PROCEDURE AND MISCELLANEOUS.

42. Workman or Dependent to Give Notice of Accident.—(1) In every case of injury to a workman by accident in any industry within the scope of this Part, it shall be the duty of the workman, or in case of his death the duty of a dependent, as soon as practicable after the happening of the accident, to give notice thereof to the employer. The notice shall be in writing and contain the name and address of the workman, and state in ordinary language the nature and cause of the injury and the time when and place where the accident occurred, and shall be signed by the injured workman or some person on his belief, or, in case of death, by any one or more of his dependents or by a person on their behalf.

(2) **In Case of Industrial Disease.**—In the case of an industrial disease, the employer to whom notice of death, disablement, or suspension from employment is to be given shall be the employer who last employed the workman in the employment to the nature of which the disease was due.

(3) **Service of Notice.**—The notice may be served upon the employer, or upon any one employer if there are more employers than one, or upon any officer or agent of the corporation if the employer be a corporation, or upon any agent of the employer in charge of the business in the place where the injury occurred, by delivering the same to the person upon whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to him at his last-known residence or place of business.

(4) **Effect of Failure to Give Notice.**—The failure to give any notice required by virtue of this section, unless excused by the Board either on the ground—

- (a) That notice for some sufficient reason could not have been given; or

- (b) That the employer or his superintendent or agent in charge of the work where the accident happened had knowledge of the injury; or
- (c) That the Board is of opinion that the claim is a just one and ought to be allowed,—

shall be a bar to any claim for compensation under this Part.

43. Employer to Report Accident.—(1) In case of accident to a workman in his employment, it shall be the duty of every employer, within three days after its occurrence, to report the accident and the injury resulting therefrom to the Board, and also to any local representative of the Board at the place where the accident occurred. The report shall be in writing, and state—

- (a) The name and address of the workman and the nature of the industry in which he was employed;
 - (b) The time when and place where the accident occurred;
 - (c) The cause and nature of the accident and injury;
 - (d) The name and address of the physician by whom the workman was or is attended for the injury; and
 - (e) Any other particulars required by the regulations;
- and may be made by mailing copies thereof addressed to the Board and to the local representative at their usual addresses respectively, postage prepaid.

(2) **Further Reports.**—It shall be the duty of the employer to make such further and other reports respecting the accident and workman as may be required by the Board.

(3) **Failure to Report Constituted an Offence.**—The failure to make any report required by virtue of this section, unless excused by the Board on the ground that the report for some sufficient reason could not have been made, shall constitute an offence against this Part.

44. Workman or Dependent to File Claim.—(1) Where a workman or dependent is entitled to compensation under this Part, he shall file with the Board an application for the compensation, together with the certificate of the physician who attended the workman (if any), and such further or other proofs of his claim as may be required by the regulations or by the Board.

(2) **Application to Be Filed Within One Year.**—Unless application for the compensation is filed—

- (a) Within one year after the day upon which the injury occurred; or
 - (b) In case the applicant is a dependent, then within one year after the death,—
- no compensation in respect of any injury shall be payable under this Part.

45. Duty of Physician.—It shall be the duty of every physician attending or consulted upon any case of injury to a workman by accident in any industry within the scope of this Part—

- (a) To furnish from time to time such reports in respect of the injury in such form as may be required by the regulations or by the Board; and

- (b) To give all reasonable and necessary information, advice, and assistance to the injured workman and his dependents in making application for compensation, and in furnishing in connection therewith such certificates and proofs as may be required, without charge to the workman.

46. Workman to Submit to Examination.—(1) Every workman who applies for or is in receipt of compensation under this Part, if requested by the Board, shall submit himself to medical examination in accordance with the regulations at a place reasonably convenient for the workman to be fixed by the Board. If the workman fails to submit himself to the examination, or obstructs the same, his right to compensation shall be suspended until the examination has taken place, and no compensation shall be payable during the period of such suspension.

(2) **Effect of Refusal of medical treatment.**—If an injured workman persists in unsanitary or injurious practices which tend to imperil or retard his recovery, or refuses to submit to such medical or surgical treatment as in the opinion of the Board, based upon independent expert medical or surgical advice, is reasonably essential to promote his recovery, the Board may, in its discretion, reduce or suspend the compensation of such workman.

47. Proof as to Dependents.—The Board may from time to time require such proof of the existence and condition of any dependents in receipt of compensation payments as may be deemed necessary by the Board, and pending the receipt of such proof may withhold further payments.

48. Province Liable for Safe-keeping of Accident Fund.—(1) Subject to subsections (2) and (3), the Minister of Finance shall be custodian of all moneys and securities belonging to the Accident Fund, and the Province shall be liable for the safe-keeping thereof. All moneys belonging to the Accident Fund collected or received by the Board shall be delivered to the Minister of Finance, or may be deposited to his credit in such banks throughout the Province as he may designate, and all moneys so delivered or deposited shall be credited by the Minister of Finance to the Accident Fund, and shall be accounted for as part of the Consolidated Revenue Fund of the Province. No moneys collected or received on account of the Accident Fund shall be expended or paid out without first passing into the Provincial Treasury and being drawn therefrom as provided in this Part. In like manner all securities belonging to the Accident Fund shall be delivered to the Minister of Finance and held by him until otherwise disposed of for the purposes of this Part.

(2) **Current Disbursements.**—The Board shall submit each month to the Auditor-General an estimate of the amount necessary to meet the current disbursements from the Accident Fund during the succeeding calendar month, and, when the estimate is approved by the Auditor-General, the Minister of Finance is directed to pay the amount thereof to the Board. At the end of each calendar month the Board shall account to the Auditor-General for all moneys so received, furnishing proper vouchers therefor.

(3) **Investment of Surplus.**—The Board shall cause all moneys in the Accident Fund in excess of current requirements to be invested and reinvested in any securities which are under the "Trus-

tee Act" a proper investment for trust funds. The Board shall from time to time submit to the Auditor-General an estimate of the amount required by it for investment, which estimate shall be accompanied by a full description of the kind and character of the investments proposed to be made, and, when the estimate and investments are approved by the Auditor-General and by the Minister of Finance, the Minister of Finance is directed to pay out the amount thereof for the purpose of such investments. At the end of each calendar month the Board shall account to the Auditor-General for all moneys so invested, furnishing proper vouchers therefor.

(4) **Investments to Be in Joint Names of Board and the Minister of Finance.**—All investments shall be made in the names of the Board and the Minister of Finance jointly, and all interest on investments shall be payable to the Board and form part of the Accident Fund.

(5) **Interest on Moneys on Hand.**—Interest on all moneys belonging to the Accident Fund in the custody of the Minister of Finance in excess of current requirements and not invested shall, subject to the certificate of the Auditor-General, be paid by the Minister of Finance to the Board at a rate not less than three per centum per annum payable quarterly, and shall form part of the Accident Fund.

49. **Audit of Accounts.**—The accounts of the Board shall be audited by the Auditor-General or by an auditor appointed by the Lieutenant-Governor in Council for that purpose, and the salary or remuneration of the last-mentioned auditor shall be paid by the Board.

50. **Annual Report.**—(1) The Board shall, on or before the first day of March in each year, make a report to the Lieutenant-Governor of its transactions during the next preceding calendar year, and such report shall contain such particulars as the Lieutenant-Governor in Council may prescribe.

(2) **Report to Be Laid Before Legislature.**—Every such report shall be forthwith laid before the Legislature if the Legislature is then in session, and if it is not then in session, within fifteen days after the opening of the next session.

(3) **Board to Publish and Distribute Information.**—It shall be the duty of the Board from time to time to publish and distribute among employers and workmen such general information in respect of the business transacted by the Board as in its judgment may be useful.

51. **Accident-prevention.**—(1) The Board shall have power—

- (a) To investigate from time to time employments and places of employment within the Province, and determine what suitable safety devices or other reasonable means or requirements for the prevention of accidents shall be adopted or followed in any or all employments or places of employment;
- (b) To determine what suitable devices or other reasonable means or requirements for the prevention of industrial diseases shall be adopted or followed in any or all employments or places of employment;

- (c) To make rules and regulations, whether of general or special application, and which may apply to both employers and workmen, for the prevention of accidents and the prevention of industrial diseases in employments or places of employment:
- (d) To establish and maintain museums in which shall be exhibited safety devices, safeguards, and other means and methods for the protection of the life, health, and safety of workmen, and to publish and distribute bulletins on any phase of the subject of accident-prevention:
- (e) To cause lectures to be delivered, illustrated by stereopticon or others views, diagrams, or pictures, for the information of employers and their workmen and the general public in regard to the causes and prevention of industrial accidents, industrial diseases, and related subjects:
- (f) To appoint advisory committees, on which employers and workmen shall be represented, to assist the Board in establishing reasonable standards of safety in employments, and to recommend rules and regulations.

(2) **Public Hearings on Safety Rules.**—Before the adoption of any rule or regulation by the Board under this section a public hearing shall be held for the purpose of considering the same. Not less than ten days before the hearing a notice thereof shall be published in at least three newspapers, of which one shall be published in the City of Victoria and one in the City of Vancouver. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or regulation made by the Board.

(3) **Power to Inspect Premises.**—The Board and any member of it, and any officer or person authorized by it for that purpose, shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the Accident Fund and the premises connected with it, and every part of them, for the purpose of ascertaining whether the ways, works, machinery, or appliances therein are safe, adequate, and sufficient, and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises, and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the Board may deem necessary, including the purpose of determining the proportion in which such employer should contribute to the Accident Fund.

(4) **Obstruction an Offence.**—Every person who obstructs or interferes with any Commissioner, officer, or person in the exercise of the rights conferred by subsection (3) shall be guilty of an offence against this Part.

52. Regulations.—(1) In addition to all other rules and regulations which may be made under the provisions of this Part, the Board may make such regulations as may be deemed requisite for the due administration and carrying-out of the provisions of this Part, and may likewise prescribe the form and use of such pay-rolls, records, reports, certificates, declarations, and documents as may be requisite.

(2) **Penalties for Breach of Regulations.**—The Board may by regulations provide penalties to which every person who contra-

venes any rule or regulation made under this Part shall be liable, provided that in no case shall the penalty exceed fifty dollars, and no prosecution for any such contravention shall be instituted without leave of the Board.

53. Publication of Regulations.—Every rule or regulation made by the Board under this Part shall upon its adoption be published in the Gazette, and shall take effect on the expiration of thirty days after the first publication in the Gazette, or at such later time as the Board may fix.

54. Penalties Generally.—Every person who is guilty of an offence against this Part shall be liable to a penalty not exceeding five hundred dollars.

55. Recovery of Penalties.—The penalties imposed by or under the authority of this Part shall be recoverable under the "Summary Convictions Act" or by an action brought by the Board in any Court of competent jurisdiction, and such penalties when collected shall be paid over to the Board and shall form part of the Accident Fund.

PART I., DIVISION (6)—WORKMEN'S COMPENSATION BOARD.

56. Constitution of Board.—There is hereby constituted a Commission for the administration of this Part, to be called "The Workmen's Compensation Board," which shall consist of three members to be appointed by the Lieutenant-Governor in Council, and shall be a body corporate.

57. Term of Office.—(1) The first members of the Board shall be appointed one for a term of eight years, one for a term of nine years, and one for a term of ten years. All subsequent appointments shall be for a term of ten years. A Commissioner may be removed at any time for cause.

(2) **Reappointment.**—(2) A Commissioner on the expiration of his term of office shall be eligible for reappointment.

58. Chairman.—(1) One of the Commissioners shall be appointed by the Lieutenant-Governor in Council to be the Chairman of the Board, and he shall hold that office while he remains a member of the Board.

(2) **Absence of Chairman.**—(2) In the absence of the Chairman or in case of his inability to act, or if there is a vacancy in the office, any other Commissioner may act as Chairman.

(3) **Presumption.**—When a Commissioner appears to have acted for or instead of the Chairman, it shall be conclusively presumed that he so acted for one of the reasons mentioned in subsection (2).

59. Appointment Pro Tempore.—(1) In the case of the illness or absence from the Province of a Commissioner or of his inability to act from any cause, the Lieutenant-Governor in Council may appoint some person to act pro tempore in his stead, and the person so appointed shall have all the powers and perform all the duties of a Commissioner.

(2) **Application of Subsection (1).**—Subsection (1) shall apply

in the case of the Chairman of the Board as well as in the case of any other member of it.

60. Commissioners to Give Whole Time to Duties.—(1) Each Commissioner shall devote the whole of his time to the performance of his duties under this Part.

(2) **Salaries.**—The salary of the Chairman shall be five thousand dollars per annum, and the salary of each of the other Commissioners shall be four thousand dollars per annum, and such salaries shall be payable out of the Consolidated Revenue Fund.

61. Disqualification.—(1) A Commissioner shall not, directly or indirectly,—

(a) Have, purchase, take, or become interested in any industry to which this Part applies, or any bond, debenture, or other security of the person owning or carrying it on;

(b) Have any interest in any device, machine, appliance, patented appliance, patented process, or article which may be required or used for the prevention of accidents.

(2) **Disposal of Interest.**—If any such industry, or interest therein, or any such share, bond, debenture, security, or thing comes to or becomes vested in a Commissioner by will or by operation of law, and he does not within three months thereafter sell and absolutely dispose of it, he shall cease to hold office.

62. Principal Office of Board.—(1) The Board shall maintain its principal office at such place in the Province as in the opinion of the Board, based on considerations of economy in administration and the prompt discharge of its duties, is best adapted for the purpose; and the sittings of the Board shall be held at the principal office, except when it is deemed expedient to hold sittings elsewhere, and in that case sittings may be held in any part of the Province.

(2) **Quorum.**—The presence of two Commissioners shall be necessary to constitute a quorum of the Board.

(3) **Vacancies.**—A vacancy in the membership of the Board shall not, if there remain two members of it, impair the authority of the two remaining members to act.

(4) **Proceedings of Board.**—The Board shall sit at such times and conduct its proceedings in such manner as it may deem most convenient for the proper discharge and speedy dispatch of business.

63. Appointment of Officers.—(1) The Board shall appoint a Secretary and a Chief Medical Officer, and may appoint such auditors, actuaries, accountants, inspectors, physicians, officers, clerks, and servants as the Board may deem necessary for carrying out the provisions of this Part, and may prescribe their duties and, subject to the approval of the Lieutenant-General in Council, may fix their salaries.

(2) **Tenure of Office.**—Every person so appointed shall hold office during the pleasure of the Board, and his salary shall be paid out of the Accident Fund.

64. Powers of Board.—(1) The Board shall have the like powers as the Supreme Court for compelling the attendance of witnesses and of examining them under oath, and compelling the production and inspection of books, papers, documents, and things.

(2) **Depositions of Witnesses.**—The Board may cause depositions of witnesses residing within or without the Province to be taken before any person appointed by the Board in a similar manner to that prescribed by the Rules of the Supreme Court for the taking of like depositions in that Court before a commissioner.

65. Board May Act Upon Report of Officers.—(1) The Board may act upon the report of any of its officers, and any inquiry which it shall be deemed necessary to make may be made by any one of the Commissioners or by an officer of the Board or some other person appointed to make the inquiry, and the Board may act upon his report as to the result of the inquiry.

(2) **Officers to Have Powers of Board.**—The Commissioner, officer, and every other person appointed to make an inquiry shall for the purposes of any inquiry under subsection (1) have all the powers conferred upon the Board by section 64.

(3) **Examination of Employer's Books.**—The Board and any member of it, and any officer of the Board or person authorized by it for that purpose, shall have the right to examine the books and accounts of every employer and to make such other inquiry as the Board may deem necessary for the purpose of ascertaining whether any statement furnished to the Board under the provisions of section 26 is an accurate statement of the matters which are required to be stated therein, or of ascertaining the amount of the pay-roll of any employer, or of ascertaining whether any industry or person is within the scope of this Part.

(4) **Officer May Take Declarations.**—Every member of the Board and every officer or person authorized by it to make examination or inquiry under this section shall have power and authority to require and to take affidavits, affirmations, or declarations as to any matter of such examination or inquiry, and to take statutory declarations required under section 26, and in all such cases to administer oaths, affirmations, and declarations and certify to the same having been made.

(5) **Obstruction an Offence.**—An employer and every other person who obstructs or hinders the making of any examination or inquiry mentioned in subsection (3), or who refuses to permit it to be made, shall be guilty of an offence against this Part.

66. Information Not to Be Divulged.—(1) No officer of the Board and no person authorized to make an examination or inquiry under this Part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the Board, any information obtained by him or which has come to his knowledge in making or in connection with an examination or inquiry under this Part.

(2) **Disclosure an Offence.**—Every person who violates the provisions of subsection (1) shall be guilty of an offence against this Part.

67. Jurisdiction of Board.—(1) The Board shall have exclusive jurisdiction to inquire into, hear, and determine all matters

and questions of fact and law necessary to be determined in connection with compensation payments and the administration thereof, and the collection of the funds therefor, and as to any matter or thing in respect of which any power, authority, or discretion is conferred upon the Board under this Part; and the action and decision of the Board thereon shall be final and conclusive, and shall not be restrained by injunction, prohibition, or other process or proceeding in any Court, or be removable by certiorari or otherwise into any Court.

(2) **Matters Specially Covered.**—Without thereby limiting the generality of the provisions of subsection (1), it is declared that the exclusive jurisdiction of the Board shall extend to determining—

- (a) The question whether an injury has arisen out of or in the course of an employment within the scope of this Part:
- (b) The existence and degree of disability by reason of any injury:
- (c) The permanence of disability by reason of any injury:
- (d) The degree of diminution of earning capacity by reason of any injury:
- (e) The amount of average earnings:
- (f) The existence, for the purpose of this Part, of the relationship of any member of the family of a workman as defined by this Act:
- (g) The existence of dependency:
- (h) Whether or not any industry or any part, branch, or department of any industry is within the scope of this Part, and the class to which any industry or any part, branch, or department of any industry within the scope of this Part should be assigned:
- (i) Whether or not any workman in any industry within the scope of this Part is within the scope of this Part and entitled to compensation thereunder.

68. Power to Review Decisions.—The Board may reopen, rehear, redetermine, review, or readjust any claim, decision, or adjustment, either because an injury or disease has proven more serious or less serious than it was deemed to be, or because a change has occurred in the condition of a workman or in the circumstances or condition of dependents or otherwise.

69. Costs.—The Board may award such sum as it may deem reasonable to the successful party to a contested claim for compensation or to any other contested matter to meet the expenses he has been put to by reason of or incidental to the contest, and an order of the Board for the payment by an employer or by a workman of any sum so awarded, when filed in the manner provided for the filing of certificates by subsection (2) of section 31, shall become a judgment of the Court in which it is filed and may be enforced accordingly.

PART II.

Liability of Employers in Industries Not Within the Scope of Part I.

70. Application of ss. 71 to 73.—Subject to section 74, sections

71 to 73 shall apply only to the industries to which Part I. does not apply and to the workmen employed in such industries.

71. Liability of Employer for Defective Ways, Works, etc., and for Negligence of His Servants.—(1) Where personal injury is caused to a workman by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings, or premises connected with, intended for, or used in the business of his employer, or by reason of the negligence of his employer or of any person in the service of his employer acting within the scope of his employment, the workman, or, if the injury results in death, the legal personal representatives of the workman, and any person entitled in case of death shall have an action against the employer; and if the action is brought by the workman he shall be entitled to recover from the employer the damages sustained by the workman by or in consequence of the injury, and if the action is brought by the legal personal representatives of the workman or by or on behalf of persons entitled to damages under the "Families Compensation Act," they shall be entitled to recover such damages as they are entitled to under that Act. R.S.B.C. 1911, c. 82.

(2) **Liability of Person Supplying Defective Ways, Works, Plant, etc.**—Where the execution of any work is being carried into effect under any contract, and the person for whom the work is done owns or supplies any ways, works, machinery, plant, buildings, or premises, and by reason of any defect in the condition or arrangement of them personal injury is caused to a workman employed by the contractor or by any sub-contractor, and the defect arose from the negligence of the person for whom the work or any part of it is done, or of some person in his service and acting within the scope of his employment, the person for whom the work or that part of the work is done shall be liable to the action as if the workman had been employed by him, and for that purpose shall be deemed to be the employer of the workman within the meaning of this Part; but any such contractor or sub-contractor shall be liable to the action as if this subsection had not been enacted, but not so that double damages shall be recoverable for the same injury.

(3) **Liability of Contractor and Sub-contractor.**—Nothing in subsection (2) shall affect any right or liability of the person for whom the work is done and the contractor or sub-contractor as between themselves.

(4) **Effect of Continuance in Employment After Knowledge.**—A workman shall not by reason only of his continuing in the employment of the employer with knowledge of the defect or negligence which caused his injury be deemed to have voluntarily incurred the risk of injury.

72. Certain Common Law Rules Abrogated.—A workman shall hereafter be deemed not to have undertaken the risks due to the negligence of his fellow-workmen, and contributory negligence on the part of a workman shall not hereafter be a bar to recovery by him or by any person entitled to damages under the "Families Compensation Act" in an action for the recovery of damages for an injury sustained by or causing the death of the workman while in the service of his employer for which the employer would otherwise have been liable. R.S.B.C. 1911, c. 82.

73. Contributory Negligence to Be Considered in Assessing Damages.—Contributory negligence on the part of the workman shall nevertheless be taken into account in assessing the damages in any such action.

PART III.

General.

74. Farm-labourers and Domestic Servants Excluded.—This Act shall not apply to farm-labourers or domestic servants or to their employers.

75. Repeals R.S.B.C. 1911, c. 244 and c. 74.—The "Workmen's Compensation Act," being chapter 244 of the "Revised Statutes of British Columbia, 1911," and the "Employers' Liability Act," being chapter 74 of the "Revised Statutes of British Columbia, 1911," are hereby repealed, as and from the first day of January, 1917.

76. Date of Act Coming Into Operation.—(1) The application of this Act as between employers and workmen and as to the payment of compensation in respect of injuries to workmen shall take effect on the first day of January, 1917.

(2) Except as provided in subsection (1), this Act shall take effect on the first day of October, 1916.

SCHEDULE.

Description of Disease.	Description of Process.
Anthrax	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelae	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelae	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelae	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelae	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis	Mining.

BRITISH COLUMBIA WORKMEN'S COMPENSATION CASES.

CAP. 244.

SECTION 6 (1). ACCIDENT.

Armstrong vs. St. Eugene Mining Co. (1908) 13 B.C.R. 385.

The question of whether an injury is by "accident" is one of fact for the arbitrator to determine (appeal).

Milholm vs. Conaty, Stack & Co., Ltd. (1911) 19 W.L.R. 860, following *Neville vs. Kelly Bros.* (1907) 13 B.C.R. 125.

A chip of steel flew into the eye of a machinist while he was

chipping a casting with a cold chisel. The eye was so damaged that it had to be removed.

Held,—this was an injury by accident within the meaning of the Act.

Culshaw vs. Crow's Nest Pass Coal Co., Ltd. (1914), 19 B.C.R. 13; 26 W.L.R. 619.

A workman killed by a snowslide, due to abnormal weather conditions, was held to have been killed by an accident within the meaning of the Act.

SECTION 6 (3). AGREEMENT.

Darnley vs. Canadian and Pacific R.W. Co. (1908) 14 B.C.R. 15; 9 W.L.R. 20.

A minor was injured by accident arising out of and in the course of his employment. He had obtained his position with his employers on the misrepresentation that he was of age. He was still under age when he signed a complete release to the employers of all liability by reason of the accident, the employers paying him \$21 for the purpose of going south to the United States. The workman then brought a claim under the Act and tendered \$21 back to the employers. The arbitrator stated a special case on the question as to whether the release was binding on the workman.

Held,—the release signed while under age was no bar to recovery of compensation. The amount paid (\$21) should be deducted from compensation awarded.

SCHEDULE 11 (8). MEMORANDUM OF AGREEMENT.

Vancouver vs. British Columbia Copper Mining Co., Ltd. (1906) 12 B.C.R. 286; 5 W.L.R. 56.

Provision for recording an award or other matter decided under the Act in the County Court for the district in which any person entitled resides is made by Schedule 11 (8).

SCHEDULE 11, (4). APPEAL.

Lee vs. Crow's Nest Pass Coal Co. (1905), 11 B.C.R. 323.

No direct appeal lies from the award of an arbitrator appointed by a judge of the Supreme Court under R.S. 1911, c. 244, schedule 11 (2).

Questioned in case of *Cozoff vs. Welsh* (1914), 28 W.L.R. 449; which decided following *Desourdi vs. Sullivan Group Mining Co.* (1909), 14 B.C.R. 256. That the appellant is not confined to a submission by the arbitrator on any question of law, and that an appeal lies.

Basanta vs. Canadian Pacific Railway Co. (1911), 16 B.C.R. 304; 5 B.W.C.C. 723.

The only method of appeal from the finding of an arbitrator on a question under the Act is by means of a case submitted under schedule 11 (4).

Scalzo vs. Columbia Macaroni Factory (1912), 17 B.C.R. 201; 21 W.L.R. 223.

The finding that a workman is not engaged upon his employer's business, where there is evidence both ways, is one of fact from which there is no appeal.

Armstrong vs. St. Eugene Mining Co. (1908), 13 B.C.R. 385; 7 W.L.R. 374.

An arbitrator submitted in the form of a special case certain questions of fact for the decision of the judge of the Supreme Court. The judge referred the matter back to the arbitrator on the ground

that, as the questions raised were ones of fact, it was for the arbitrator to determine them.

Held,—(appeal), the matter was properly referred back. The arbitrator is not *functus officio* until he has made his award.

British Columbia Sugar Refining Co. vs. Granick (1910), 44 S.C.R. 105.

When a workman failed in an action for negligence and recovered compensation under section 2 (4) [1902] the B.C. Court of Appeal held that there was an appeal from the judge's decision—as to compensation as if given in an ordinary action (1910), 15 B.C.R. 198; 14 W.L.R. 433.

Held,—(Supreme Court of Canada) schedule 11 (4) applies in such a case as this, and the appeal is limited to questions of law only.

SECTION 6 (1). ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

Armstrong vs. St. Eugene Mining Co. (1908), 13 B.C.R. 385; 7 W.L.R. 374.

The question as to whether an accident arises out of and in the course of the employment is one of fact for the arbitrator to determine (Appeal).

Alexander vs. Todd, 1 W.W.R. 720.

A workman, subject to fits was employed at pile driving. He was last seen on the pile driver washing for breakfast. He disappeared in a manner unexplained. The arbitrator inferred that he had been seized by a fit and fallen off the pile driver and been drowned.

Held,—the accident arose out of and in the course of the employment.

Granick vs. British Columbia Sugar Refining Co. (1909), 14 B.C.R. 251.

Granick was hired, during a rush of work, as a temporary hand by a sugar refining company. There was a lift on the premises, but there was a rule against its being used by workmen except for carrying freight. Granick was set to work on floor No. 1, but before he commenced work the foreman cautioned a fellow-workman not to allow Granick to use the lift until he knew how. The fellow-workman subsequently saw Granick attempt to use the lift and cautioned him against doing so. In the afternoon Granick was left alone for four or five minutes, and during that time, somehow, was killed by being jammed between the lift and the side of the shaft at floor No. 2.

Held,—the injury was by accident arising out of and in the course of the employment.

Cervio vs. Granby Consolidated Mining Power Co. (1910), 15 B.C.R. 192; 13 W.L.R. 721.

A helper to a chuteman was injured by an unexplained fall of rock which occurred after he had entered the chute. His orders were that he should not enter the chute until told by the "mucker-boss" it was safe to do so. On the occasion in question the "mucker-boss" had given no such permission, but there was some evidence that the chuteman had told his helper that the "mucker-boss" had done so, and that the helper believed this to be the case.

Held,—the accident arose out of and in the course of the employment.

Culshaw vs. Crow's Nest Pass Coal Co., Ltd. (1914), 19 B.C.R. 113; 26 W.L.R. 619.

A workman was employed as fan-man by a colliery company in a mountainous district. A shelter was provided for refuge in severe weather. The workman took shelter in this refuge and while there was killed by a snow-slide. The snow-slide was caused by the very abnormal weather conditions at the time.

Held,—(on appeal) the workman having a right to be in shelter at the time of the accident within the ordinary course of his employment, was exposed to special risks of the locality; and the accident arose out of and in the course of the employment.

Maftichuk vs. Crow's Nest Pass Coal Co. (1913), 4 W.W.R. 909.

A workman was killed by a snow-slide when clearing snow from a railway line at the foot of a mountain where the employer's mine was situated. Snow-slides had been frequent at this place, and six years previously a man had been killed by one. Efforts had been made to break the snow-slides.

Held,—the risk incurred of being caught by snow-slides was one incidental to the employment; and the accident consequently arose out of the employment.

Scalzo vs. Columbia Maccaroni Factory (1912), 17 B.C.R. 201; 21 W.L.R. 223.

A workman's duty was to stand on a platform in front of a machine. He was injured by going behind the machine. Conflicting evidence was given as to the reasons for the man going there. The arbitrator found that the man went behind for his own purposes, and that, therefore, the accident did not arise out of and in the course of his employment.

Held,—the arbitrator's finding that the man went for his own purposes to a place where he had no business to go was a finding of fact, of which there was evidence, and which was, therefore, conclusive. Upon this, it was reasonable to hold that the accident did not arise out of and in the course of the man's employment.

McCormick vs. Kelliher Lumber Co. (1913), 18 B.C.R. 57; 23 W.L.R. 10.

A workman was employed as a fireman, and it was part of his duty to see that steam was kept up. The fuel for the furnaces was conveyed by means of carriers operated by a belt revolving on a pulley attached to the main driving shaft of the engine. One of the carriers clogged and the belt was thereby thrown off the pulley. It was the duty of the chief engineer to adjust the belt on such occasions, but on this occasion he happened to be absent. The fireman, in order that his supply of fuel should continue, attempted to adjust the belt and was injured in so doing.

Held,—(appeal) the accident arose out of and in the course of his employment.

Evans vs. British Columbia Electric Rail (1914), 7 W.W.R. 121.

A workman was employed to repair and charge the batteries in electric trucks which were sent to a building for that purpose. At the time of the accident there were no trucks in the building and he was waiting, leaning with his arms folded against a bench about thirty feet from where he would have to charge the batteries. He was run into by a truck and killed.

Held,—the accident arose out of and in the course of the deceased's employment.

SECTION 10.

Desourdi vs. Sullivan Group Mining Co. and Maryland Casualty Co. (1909), 14 B.C.R. 256.

Before there can be a payment into court under section 6 [1902] there must have been either an admission of liability on behalf of the insurers or the insurers must have been found liable to pay the amount due by a competent tribunal.

The rules purporting to provide for procedure under section 6 are *ultra vires*. The only authority in the Act to make [1902] rules is contained in schedule 11, paragraphs 2 and 5.

SECTION 7 (1). CLAIM FOR COMPENSATION.

Michelli vs. Crow's Nest Pass Coal Co. (1912), 3 W.W.R. 63.

A claim need not be specific. The requirements of a good claim are very easily satisfied. Almost any unqualified demand for compensation will be sufficient. Initiation of proceedings do not constitute a good claim.

SCHEDULE 1. ASSESSMENT.

McCormiek vs. Kelliher Lumber Co. (1913), 18 B.C.R. 57.

On the trial of an action for alleged negligence causing the death of a workman, the dependant as plaintiff recovered \$1,500 damages. This judgment was set aside by the Court of Appeal on the ground that there was no negligence (1912), 1 W.W.R. 1113.

The dependant then applied to the Court of Appeal to assess compensation under the Workmen's Compensation Act, but the Court of Appeal refused to do so. The dependant then applied to the trial judge, who assessed the compensation at \$1,500. The employers appealed from this on the ground that as the plaintiff the dependant, had not asked for an assessment of compensation at the original trial she could not come at a later date and do so.

Held,—(appeal) the effect of the reversal of the original judgment was to put the parties back into the position that they would have been in at the trial, if the trial judge had given the judgment, that the Court of Appeal held should have been given, and the dependant was entitled to apply to him to have the compensation assessed.

SECTION 6 (4). COSTS.

Wilson vs. Kelly (1909), 14 B.C.R. 436, 12 W.L.R. 161.

Where the workman fails in an action for negligence and is awarded compensation under the Act, the Court has power in its discretion to deal with the costs of the action.

An action was commenced by an injured workman for damages for negligence. After pleadings were closed the employers admitted liability to pay under the Workmen's Compensation Act. This offer the workman refused and the action proceeded, and at the trial the employers succeeded. Compensation was then awarded in accordance with the employer's offer. The judge ordered that the employers should have the costs following the event upon the dismissal of the action and the workman should have the costs of an undefended proceeding under the Workmen's Compensation Act, as estimated by the Registrar.

Desourji vs. Sullivan Group Mining Co. (1909), 14 B.C.R. 241.

Where a wrong procedure has been adopted based upon a general misconception of a decision of the court, the court will, in its discretion, order both parties to pay their own costs.

SECTION 6 (4).

Follis vs. Schaahe Machine Works, Ltd. (1908), 13 B.C.R. 471.

Costs of a successful claim under Workmen's Compensation Act after an unsuccessful action set off against costs of action. Difference deducted from compensation.

Kruz vs. Crow's Nest Pass Coal Co. (1909), 14 B.C.R. 385.

An administrator of the estate of a deceased workman killed in his employment, commenced proceedings under the Act. After various adjournments the administrator was found to be insolvent, and also became an inmate of a penitentiary on a charge of theft. An application was consequently made to Judge in Chambers for security for costs.

Held,—an insolvent person suing as trustee for another is not a

nominal plaintiff within the rule that a nominal plaintiff, if without means, may be required to give security for costs of the action.

SECTION 2.

Krzus vs. Crow's Nest Pass Coal Co. (1912), A.C. 590 reversing (1911), 16 B.C.R. 120.

The personal representatives, resident within the province of a deceased foreign workman killed while working within the province by an accident arising out of and in the course of his employment as a quarryman, are entitled to claim compensation on behalf of the dependants of the workman even though they may be aliens and resident abroad.

Moffat vs. Crow's Nest Pass Coal Co. (1913), 4 W.W.R. 747.

It will be sufficient to raise a presumption of marriage if evidence is given that a man and woman lived together and were considered by their neighbors as man and wife together with the production of a certificate of marriage of persons of the same name without strict proof of identity.

There is no presumption of law that a wife is dependant on her husband though there is an inference of fact. A child *en ventre sa mere* is a dependant if its mother is a dependant under the Act.

Varesick vs. British Columbia Copper Co. (1906), 12 B.C.R. 286.

A workman was killed by accident in his employment. His father, aged 66, and mother claimed compensation as dependants. The son had left his home about seven years before the accident. He sent at regular intervals for the first six years sums amounting in all to \$400. The only amount paid in the year before his death was a sum to pay the passage of a younger brother to America. The father worked about five acres of land owning about half himself. The family at home consisted of father, mother and adult brother. There was one hired servant of nineteen years.

Held,—though benefits were derived from the deceased earnings, and though there was a probability that such benefits might have continued had he lived, the father and mother were not dependants within the meaning of the Act.

Follis vs. Schaaque Machine Works (1908), 13 B.C.R. 471.

On evidence that money was received by the parents of a deceased workman from him in irregular amounts at irregular intervals,

Held,—the parents were wholly dependant.

SECTION 6 (2).

Granick vs. British Columbia Sugar Refinery Company (1910), 15 B.C.R. 198 (appeal S.C.C.).

A workman served his employer with notice of an injury by accident both under the Workmen's Compensation Act and under the Employers' Liability Act.

Held,—(appeal), the workman was entitled to maintain his action under the latter Act, as this was not an election to proceed under the former.

SCHEDULE 1 (1).

Roylance vs. Canadian Pacific R.W. Co. (1908), 14 B.C.R. 20.

A switchman lost the thumb of his right hand by accident, and thereby became entitled to compensation as a workman permanently partially incapacitated.

Under the Workmen's Compensation Act the loss of a thumb is worth \$1,500.

Powell vs. Crow's Nest Pass Coal Co. (1913), 5 W.W.R.

An employer is not liable to pay compensation when the incapacity of an injured workman is due solely to the gross neglect of the doctor attending him.

SCHEDULE 11 (4).

Lewis vs. Grand Trunk Pacific Rail. Co. (1913), 18 B.C.R. 32.

After an arbitrator has made his award he is *functus officio*, and he has no power to submit a question to a judge under schedule 11, paragraph 4 (appeal).

British Columbia Copper Co. vs. McKillreck (1913), 18 B.C.R. 129.

An award under the Workmen's Compensation Act was made a judgment of the County Court and execution was issued against the employers of a deceased workman. The employers brought an action in the Supreme Court to restrain the father of the deceased workman from enforcing the execution on the ground that they had paid money into court before the award in full settlement of the claim. The Supreme Court dismissed the action.

Held.—(appeal), the action was maintainable on the ground that Schedule 11 (8) did not give the County Court Judge power to grant the relief claimed (Gallihier, J. A., *hesitante* as to the effect of Schedule 11 (8) having regard to the regulations in rule 63 (B.C. Gazette, 1904, p. 298) (2), the execution should be stayed.

SECTION 7.

Moffat vs. Crow's Nest Pass Coal Co. (1913) 18 B.C.R. 303.

When notice of the injury has been given and claim for compensation made, within the time stated in the Act, by the injured workman, then, on his death, his dependants may continue proceedings without fresh notice or claim.

SECTION 4.

Maftichuk vs. Crows Nest Pass Coal Co. (1913).

A workman employed clearing snow from a railway track in front of a carpenter's shop on the employer's premises at the foot of the mountain where the employers mine was situated was killed by a snow-slide.

Held.—the place where the deceased was working was a work belonging to the mine within the Coal Mines Regulation Act, section 2, and, therefore, he was employed on in or about the mine within the meaning of section 4 of the Workmen's Compensation Act.

SECTION 6 (4).

Granick vs. British Columbia Sugar Refinery Co. (1910), 15 B.C.R. 198.

At the commencement of an action launched under the Employer's Liability Act, counsel for the plaintiff admitted that he had practically no case at common law but only one under the Workmen's Compensation Act. The judge, however, heard the evidence before dismissing the action, and decided the matter under the Workmen's Compensation Act (1909), 14 B.C.R. 251.

Held—(appeal) this was a proper procedure.

Major vs. Stewart (1914), 6 W.W.R. 687.

The Supreme Court remitted a matter to an arbitrator "for a new award" on the ground that the arbitrator was in error in disallowing compensation on certain grounds. The arbitrator refused to hear further evidence, and made a new award, supporting his former award, stating that the grounds upon which the Supreme Court had

upset his award were not the grounds upon which he based his award.

SECTION 6 (2).

Armstrong vs. St. Eugene Mining Co. (1908), 13 B.C.R. 385.

The question of whether an injury is attributable solely to the workman's serious and wilful misconduct or serious neglect is a question of fact for the arbitrator to determine. (Appeal).

Clayton vs. Hanbury (1914), 27 W.L.R. 893.

A workman was forbidden to clean a machine until he had thrown the lever back and turned off the power. He had received repeated warnings as to this. The foreman, though he did it sometimes himself, in no way countenanced the workman doing it. The workman was injured when cleaning the machine in this way.

Held,—the accident was the result of the workman's serious and wilful misconduct.

Garment vs. Charles Austin Co., Ltd., 34 O. L. R. 417.

Injury to servant. Workmen's Compensation Act, 4, Geo. V., c. 25 (O). Remedy. Application to board. Action. Jurisdiction of Supreme Court of Ontario. Section 15 amended by s. 8 of 5 Geo. V., c. 24. Findings of jury. Negligence. Contributory negligence. Sections 107 and 108. Damages. Judge's charge.

SECTIONS 15, 107 AND 108.

Miller vs. International Hotel Co., 7 O. W. N. 423.

Explosion in Hotel Kitchen. Injury to servant. Negligence. Defect in hot water plant. Liability at common law. Workmen's Compensation for Injuries Act. R. S. O. 1897, c. 160, s. 6 (a). Findings of jury. Finding by Appellate Court on evidence. Judicature Act, s. 27 (2).

SECTION 6 (a), ACT 1897.

Sawyer vs. Can. Pac. Ry. Co. (1915), 7 O. W. N. 166.

Assessment of damages. Personal injuries. Expert evidence.

Caldarelli vs. O'Brien, 9 O. W. N. 162.

Absence of evidence to support. Findings of jury. Suggested grounds of action. Negligent order of foreman. Workmen's Compensation for Injuries Act, s. 3 (c), s. 14. Refusal of new trial. Dismissal of action.

SECTION 14.

Tighe vs. Tyendinaga (1915), 7 O. W. N. 548.

Notice under Workmen's Compensation Act—given too late.

SECTION 20.

Pemberton vs. Hamilton Bridge Co., 7 O. W. N. 387.

Course of employment. Order of foreman of works. Injury to servant. Negligence. Evidence. Findings of jury.

SECTION 3 (1).

Jasper vs. Toronto Power Co., Ltd., 9 O. W. N. 191.

Injury to servant. Findings of jury. Voluntary assumption of risk. Fault of fellow servant. Workmen's Compensation Act.

SECTION 107.

Caplin vs. Walker Sons, 35 O. L. R. 291.

Services of workman temporarily let or hired to another. Action against that other. Remedy under Workmen's Compensation

Act, 4 Geo. V., c. 25. Exclusion of action by s. 13. Defective condition of works. Knowledge of defect. Voluntary assumption of risk.

SECTION 13.

Dube vs. Algoma Steel Corporation, Ltd., 9 O. W. N. 389; 35 O. L. R. 371.

Death of person operating derrick. Negligence of owner of derrick. Negligence of hirer. Findings of jury. Evidence. Contributory negligence. Master and servant. Effect of hiring.

SECTION 107.

Schofield vs. Blome, Johnston & Blome (1914), 26 O. W. R. 389; 6 O. W. N. 149, 16 D. L. R. 875.

Fall from hoist. Actions for damages for personal injuries sustained by plaintiffs, employees of defendants, by reason of the fall of a hoist being used temporarily by them while bricking up openings in a wall of a building, the said accident occurring through the alleged negligence of defendants. The hoist was operated by a cable and drum driven by a stationary engine which also operated a fixed drum for other purposes. Middleton, J., 25 O. W. R. 282; 5 O. W. N. 328, held that defendants were liable under Workmen's Compensation Act in that plaintiffs were working as they were in obedience to orders of their foreman, who was negligent in not forbidding the hoisting engine to be used for any other purpose when plaintiffs were upon the hoist; if liability under Workmen's Compensation Act only, then for \$2,700 and \$1,500 respectively.

SECTION 106.

Hallet vs. Abraham & Fisher (1914), 26 O. W. R. 355; 6 O. W. N. 355; 17 D. L. R. 854.

Person owning and supplying ways works. Where the jury found that a tender by an architect for the construction of a building had been accepted by the owner, Lennox, J., held, that the contractor-architect was the person owning and supplying the ways, works, etc., used for the purpose of executing the work, within the meaning of Workmen's Compensation Act R. S. O. (1914), c. 146, s. 4, and as such was liable to a servant of a sub-contractor who was injured as the jury found, through the want of a ladder.

Lambert vs. City of Toronto. O. L. R. 36, 269 (1916).

Negligence. Death of workman employed by Electric Company. Negligent arrangement of wires. Electric shock. Failure of foreman to warn workman. Liability of company. Dangerous situation created by operations of City Corporation. Liability of Corporation. Findings of jury. Indemnity. Contract. Relief over.

SECTION 106.

Caplin vs. Walker Sons. 35 O. L. R. 291.

The plaintiff, a teamster employed by persons who did a teaming business, was sent by his employers with a team of horses to work in the yard of the defendants. While working there he received an injury which, he alleged, arose from a defect in a truck of the defendants which he was endeavoring to move with his employers' team; and he brought this action to recover damages for his injury.

Held, that the plaintiff was a workman temporarily let or hired to another by his employers, who continued to be his employers, and that he could not maintain the action; his rights, if any, were to be worked out under the provisions of the Workmen's Compensation Act, 4 Geo. V., ch. 25 (O).

Sections 2, sub-sec. 1 (f), 4, 5, 9, 10, 13 and 15 of the Act considered.

Travato vs. Dominion Cannery Ltd. (1915), 35 O. L. R. 295.

Writ of summons. Failure to serve. Renewal after expiry of years. Limitation of actions. Workmen's Compensation for Injuries Act, Sec. 9. Revival of action after statutory bar. Claim at common law not barred. Effect of. Right to bring new action.

SECTION 9.

PROVINCE OF NOVA SCOTIA.

NOTES OF THE LAW OF EMPLOYERS' LIABILITY
IN NOVA SCOTIA.

By F. L. DAVIDSON, LL.B., BARRISTER AT LAW, OF THE NOVA SCOTIA
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The law of the Employers' Liability is in part based upon the principles of the Common Law of England, but has been greatly extended by recent Statutes.

Namely, by the Employers' Liability Act of 1880, and the Workmen's Compensation Act of 1906 which came into force in England on the first day of July, 1907.

THE EMPLOYERS' LIABILITY AT COMMON LAW.

The Common Law principle expressed by the maxim "*Sic utere tuo ut alienum non laedas*" imposes upon everyone the duty to govern and regulate his own acts and conduct in such a manner that he shall not occasion injury to others. The contract of service between employer and employed does not absolve the former from his personal obligations which he owes to the workmen to a like extent as to other persons. The breach of this Common Law duty is known as "Negligence."

Every employer, therefore, who has been guilty of negligence either in the regulation of his own conduct or in the control of his business, is responsible at Common Law to his workmen, as to others. This Common Law duty may be summed up in the words of the late Lord Herschell, in delivering judgment in the case of *Smith vs. Baker*, 60 L. J. Q. B., 683, where he says, "The employer is bound at Common Law to so carry on his business as not to expose his workmen to unreasonable risks."

Under the Common Law a master also answers for the tortious acts of his servants while acting under his general authority and for his benefit.

This Common Law principle is clearly shown by the maxim, "*Quit facit alium facit per se*," "He who does anything by another does it by himself."

This maxim, however, a rule of general obligation in most other relationships, was held in the much discussed case of *Priestly vs. Fowler*, three M. W., not to apply to the relationship of master and servants in such a manner as to fix the master with liability to his servants *for the acts of his fellow-servants*.

Thus became established what has become known as the doctrine of "Common Employment."

At Common Law also, the employer was relieved of responsibility for an injury *causing death*, as was also his estate from liability in cases where judgment was not recovered against the employer before his death.

This state of the law arose from the application of the Common Law rule, that every personal right of action, *i.e., for personal injury* dies with the person entitled to bring it or, on the death of the person against whom it can be brought. "*Actio personalis moriturum cum persona*."

Another serious subtraction from the small residuum of the employers responsibility at Common Law arose from a recognition of what is often called the doctrine of "*Volenti non fit injuria*." ("That which a man consents to cannot be considered an injury.") applied to the relation of master and workmen. In other words, an employer was absolved from the consequences of the non fulfilment of the duty of care ordinarily imposed upon him by the Common Law,

by the workmen voluntarily agreeing that as between his employer and himself, he would take no risks arising from the breach of such duties. It was further held that such a contract between the workman and his employer need not be made in express terms, but could be implied from the conduct of the workman.

Lastly, upon this subject, an employer was always relieved from the consequences of the breach of the Common Law duty towards his workmen, if he could show that such workman had himself been guilty of negligence, conducing in a substantial degree to bringing about the result for which he was attempting to make his employer responsible. In other words, by showing that the workman had been guilty of "contributory negligence."

NOTE:—This last mentioned defence is still open to an employer in Nova Scotia upon his Common Law liability, or under the Employers' Liability Acts. (See Part II.), but for the purpose only of being brought into account in assessing damages in an action—(Part I., section 7) (b), properly brought under the provisions of Part II. of the Nova Scotia Workmen's Compensation Act, 1915, and which came into force in this Province January 1st, 1917, but will *not* avail him in claims under this Act, unless it can be shown that the injury to the workman is attributable solely to the "serious and wilful misconduct" of that workman and the injury does not result in his death, or serious and permanent disablement.

SUMMARY OF EMPLOYERS' LIABILITY AT COMMON LAW.

Under the Common Law, an employer is liable to his workman for the consequences of injury caused by his personal negligence or breach of a statutory duty imposed upon him.

The employer, however, or his estate, is exempt from responsibility, under the following circumstances:—

(1) His estate is not liable unless judgment has been recovered against the employer *during his lifetime*.

(2) He is responsible to his injured workman *only*, and not to his relatives or representatives.

(3) He is also (subject to the same exception as to his breach of his statutory duty) absolved from the consequences of the negligence of those to whom the duties of management of his business *have been delegated*, or for injuries to the workman *caused by fellow-workmen*.

(4) He is also relieved from liability by showing that the injured workman agreed to take the risk resulting from the breach of his Common Law duty, or by showing that the workman contributed to bring about the injury of which he complained.

Such was, and is, the extent of an employers' liability to his workman in Nova Scotia, before the passing of and apart from the Statutes that have been passed, considerably increasing it.

These Statutes, which will now be discussed in their order, are known as:—

- (1) "The Fatal Injuries Act," R. S. (N. S.) 1900, chapter, 178.
- (2) "The Employers' Liability Act," R. S. (N. S.), 1900, chapter, 179.

NOTE:—Workmen, or if the injury results in death, the legal personal representative of the workman and any person entitled in case of death, may in cases arising under Part II. of this Act have an action against the employer, and be entitled to recover the damages sustained by the workman in consequence of the injury.

(3) "Nova Scotia Workmen's Compensation Act" 1915, chapter 1.

The Fatal Injuries Act, R. S. (N. S.), 1900, chapter 178.

This Act, commonly known as Lord Campbell's Act, is taken from the corresponding Statute, passed in England in 1845.

By its incorporation into the "Employers' Liability Act" of 1880, it gives to a person represented as a workman, as to any other person whose death has been occasioned by the wrongful act, neglect or default of another, a right to bring an action against the employer or other person guilty of such wrongful act, neglect or default, which action is for the benefit of the relatives of the deceased, which are enumerated in the Statute.

The "Fatal Injuries Act" has the effect of taking away from employers one of the defences under the Common Law, namely, that he is responsible to the injured workman *only*, and not to his relatives or representatives. By the combined effect of Lord Campbell's Act and the Employers' Liability Act, as above mentioned, the doctrine of "*Actio personalis moritur com persona*" (A personal right of action dies with the person") is abrogated as much in the case of the death of the workman as any other person.

Lord Campbell's Act was incorporated into the Employers' Liability Act by virtue of the words at the end of the third section of the latter Act, which enacts that, "In case the injuries result in death, the legal personal representatives of the workman, and any other person entitled in case of death, shall have the same right of compensation and remedies against the employer, as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work."

Both the Employers' Liability and Lord Campbell's Acts, must be considered together, for the liability arising from both, and the special procedure required by both, must be observed.

The following are the only persons to whom the right of action is given by Lord Campbell's Act, and therefore the only persons for whose benefit an action for fatal injuries can be brought under the Employers' Liability Act. The wife, husband, parents (which word includes grand-parents and step-parents) and children (which word includes grandchildren and step-children, but not illegitimate children) of the person whose death has been occasioned by negligence.

The Act also provides that only one action shall be brought. That it must be brought within one year from the time of the death, and brought in the name of the executor or administrator of the person deceased, but if there is no executor or administrator, it shall be competent for any or all other persons for whose benefit such action should be maintained, to sue for themselves in their own names or in the names of any one or more of them.

The pecuniary loss resulting from the death to the relatives entitled to sue, is the only thing that can be recovered in an action under Lord Campbell's Act.

The Employers' Liability Act, R. S. (N. S.), 1900, chapter 179.

This Act was passed in England in 1880, and its provisions have been largely incorporated into the Nova Scotia Act.

The effect of this Act is practically to do away with the defence of "Common Employment" available to the employers at Common Law.

This doctrine of "common employment" was decided by the much discussed case of "Priestly and Fowler," and may be enunciated as follows:—If the person occasioning and the person suffering injuries are fellow-workmen, engaged in a common employment, and having a common master, such master is not responsible for the consequences of the injuries.

The doctrine of "Common Employment" thus becoming established in England, it became necessary in the labor interests to obtain legislation, abrogating this law.

The Employers' Liability Act was therefore passed in 1880, the only object of the Act being to deprive the employer—and this only to a limited extent—of the right of the said defence of "Common

Employment," when sued by the workman who has received personal injury.

The effect of the change effected by the statutes is well stated by A. L. Smith, J., in the case of *Welbin vs. Ballard*, 17 Q. B. D., 122, thus, "The workman when he sues his master under the provisions of the Act for any of the five matters designated in it, shall be in the position of one of the public suing, and shall not be in the position a servant theretofore was when he sued his master; in other words, that the master shall have all of the defences he theretofore had against any of the public, suing, but shall not have the special defence of "Common Employment," he theretofore had when sued by the servant.

No special privilege is given to the workman or his representatives. He and they are to have, in cases where the Act applies, "The same right of compensation and remedies against the employer, as if the workman had not been a workman or nor in the service of the employer, nor engaged in his work."

It consequently follows that the same defences, and to the same extent, are open to the employer that would be open to him were the action brought against him by a stranger, and this in addition to the defences declared by the Act itself.

The most usual of the defences open to an employer under the Act, are as follows:—

DEFENCES UNDER THE ACT.

(a) That the act of the servant causing injury was *committed wilfully*.

(b) That the servant, when he occasioned the injury was not acting within the scope of his employment.

(c) That the injury was *unavoidable* or not caused by negligence.

(d) That the injured person was a *trespasser* or mere licensee.

(e) That the person injured was himself guilty of *contributory negligence* (i.e.) negligence of workman contributing to bring about his own injury.

(f) That the injured person voluntarily took the risk of that which caused the injury. "*Volenti non fit injuria*," ("That to which a man consents, cannot be considered an injury.")

The plaintiff must be a workman within the meaning of the Employers' Liability Act, to be entitled to the benefits of it.

"Workman" is defined in the Act not to include a domestic or menial servant, and save as aforesaid, means any railway servant, and any person who, being a laborer, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labor, whether under the age of twenty-one years, or above that age, has entered into or works under the contract with an employer, whether the contract was made before or after the 30th of March, 1900, and whether such contract was expressed or implied, oral or in writing, and whether a contract of service or a contract personally to execute any work or labor.

"Railway servant" includes a railway servant, tramway servant, or street railway servant.

Section three gives a right to compensation and remedies to a workman when personally injured, when he has suffered personal injuries caused by negligence of any person in the service of the employer, or by reason of the acts or omissions of such persons during the course of the employment. In such cases where personal injury has been caused to a workman, he, or in case the injury results in death, his legal personal representatives and any person entitled in case of his death, shall have the same right of compensation and remedy against the employer, as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

Section four.—Where the execution of any work has been carried into effect under any contract, and a workman employed by the contractor, or by any subcontractor, is injured, such injury resulting from any defect in the condition or arrangement of the "ways, works, machinery, plant buildings or premises," owned by the person for whom the work is being done, or the defect or failure to discover or remedy the defect arose from the negligence of the person for whom the work or any part thereof is done, or of some person being in his service and entrusted by him with the duties of seeing that such condition or arrangement is proper, the person for whom the work or any part of the work is done, shall be liable to pay compensation for the injury, as if the workman had been employed by him, and for that reason to be deemed the employer of the workman, within the meaning of this Act; provided always, that such contractor or sub-contractor shall be liable to pay compensation for the injury, as if this section had not been enacted, so, however, that the double compensation shall not be recovered for the same injury. Nothing in this section, however, shall effect any rights or liabilities of the person for whom the work is done, and the contractor and sub-contractor (if any), as between themselves.

An action under this chapter for the recovery of compensation for an injury, shall not be brought against the employer by the workman, unless notice that the injury has been sustained is given within twelve weeks, and the action is commenced within six months from the time of the accident causing injury, or in case of death, within twelve months of the time of same, provided always, that in case of death, the want of such notice shall be no bar to the maintenance of such action, if the judge is of opinion that there was reasonable excuse for such want of notice.

SECTION SIX, COMPENSATION LIMITED TO \$1,500.00.

Section nine provides that action may be maintained against personal representatives of the deceased employer.

Section fourteen, provides that the contract or agreement entered into by the workman shall not be a bar, or constitute any defence to any action for recovery of compensation for any injury, except in certain specified cases mentioned in said section.

These are some of the general principles of the Employers' Liability Act, and as before mentioned, the effect of the Act is to practically do away with the doctrine of "Common Employment" already referred to, in action brought under the Act.

THE WORKMEN'S COMPENSATION ACT AND ITS PURPOSE.

This new Act is a radical departure from all former acts passed in Nova Scotia. It is in effect what might be termed compulsory collective insurance administered by a state board. Under the original conditions which caused such legislation to come into existence, the employer was individually liable, where liability existed at all, and the employer usually insured himself against liability in a private company.

The Act provides for the creation of such a fund known as the accident fund, by means of an assessment, made upon employers, of a percentage of their yearly pay rolls. The amount so paid by the employer may be looked upon as an insurance premium paid by him, as in reality it is. Instead of paying the premium to a private company it is paid to an independent board known as the Workmen's Compensation Board, composed of three commissioners appointed to administer the Act.

Part I. takes in practically all industries, and makes provision for the payment of compensation for accidents happening to workmen in such industries, and also for compensation where workmen

become ill or die from certain industrial diseases, such as lead, mercury, phosphorus or arsenic poisoning.

SCALE OF COMPENSATION.

1. When death results, the amount of compensation shall be:—
 - (a) The necessary expenses of burial, not to exceed \$75.00.
 - (b) To widow \$20.00 a month for life, or until re-marriage, and in the latter case a sum of \$480.00 is paid, being the equivalent of compensation for two years.
 - (c) If there are a widow and children, an additional allowance of \$5.00 per month is made of each child under sixteen years of age, not exceeding \$40.00 per month for widow and children.
 - (d) If there is no widow, but there are children, a monthly payment of \$10.00 is made to each child under sixteen, not exceeding in the whole \$40.00.
 - (e) Where the dependents are persons other than widow or children, provision is made for compensation not to exceed \$30.00 a month.

In case the payments mentioned would exceed fifty-five per cent. of the average earnings, such payments would be reduced proportionately.

2. Where permanent total disability results, an amount equal to fifty-five per cent. of the workman's average earnings is paid monthly, semi-monthly or weekly, during the life of the workman.

3. Where temporary total disability results, fifty-five per cent. of the average wages is paid so long as the disability lasts.

4. Where permanent partial disability results, fifty-five per cent. of the impairment of the workman's earning capacity is paid.

THE ASSESSMENTS.

For the purpose of creating and maintaining an accident fund, all industries are divided into classes or groups, and an assessment rated upon the pay-roll is made upon the employers in each class sufficient to meet all claims arising from accidents happening during the year in such class.

It must not be supposed that all industries within the same class will be assessed the same rate. That would be possible only in case all the industries were alike. The different kinds of industries will be rated according to their hazard.

EXCLUSION OF INDUSTRIES.

Power is given the board to exclude from the scope of Part I. any industry or industries in which not more than a stated number (fixed by the board) of workmen are usually employed. This power has been exercised by the board in line with the practice adopted elsewhere to exclude small undertakings, and especially those not carried on regularly.

Any employer, however, no matter how small his business may apply for the protection of the Act. In such case he can be assessed and consequently there would be no longer any object in excluding him.

Part II. covers all employments, not within the scope of Part I. with the exception of farm laborers and domestic or menial servants and provides that employers shall be individually liable for damages where personal injury is the result of the negligence of the employer, or of any person in the service of the employer, or by reason of any defect in the arrangement or condition of the employer's works, machinery, plant, building, etc. The old common law defenses of assumption of risk, contributory negligence, and negligence of a fellow employee, are abrogated. Under Part II. the liability of an employer is unlimited in amount.

An employer not under Part I., who desires to escape personal liability under Part II., may voluntarily apply to the board to be brought under Part I.

PREVENTION OF ACCIDENTS.

One of the great features of the Act is the provision made for the prevention of accidents.

First.—The employers in any class may form associations for the purpose of making rules for the prevention of accidents in the industries represented by such association, and such rules shall be binding upon all the employers in such class or sub-class, including employers who refuse to join the association. Hereafter careful employers will have a personal interest in preventing accidents in another establishment where the employer is not careful or where proper safety rules and appliances have not been adopted, for the greater the number of accidents that occur in any class the greater amount will each member of the class be required to pay.

Second.—The board has power to surcharge an establishment if it is so circumstanced or conducted that the hazard is greater than the average of the class to which such particular establishment is assigned.

When a workman meets with an accident the employer is required within three days to notify the board. The board will obtain as soon as possible the information it requires from the employers, from the employee, and from the physician in attendance if any. If necessary, it can have its own medical office examine the injured workman. It has been found in other places that a vast number of claims require no further investigation than that obtained from the several reports.

In view of the fact that compensation is payable in practically all cases without regard to whose fault caused the injury, it is unnecessary to have investigations or trials to establish the right of the workman to compensation. All questions of fact that may arise in the administration of the Act are decided by the board, and there is no appeal from such questions of fact.

All litigation between workmen and employers is unnecessary, and the Act expressly takes away from workmen the right to sue the employer, in all cases arising under Provisions of Part I.

The compensation payable under the Act cannot be attached by any process of law, nor can it be assigned except with the consent of the board. The Act prohibits the employer from making any agreement with his workman to deprive the latter of any of the benefits conferred on the workman by the Act, and any such agreement is absolutely void, and the employer is prohibited from deducting from the workmen's wages any portion of the assessment payable by the employer.

PROVINCE OF NOVA SCOTIA.

THE WORKMEN'S COMPENSATION ACT, 1915.

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CHAPTER I.

An Act to Provide for Compensation to Workmen for Injuries Sustained and Industrial Diseases Contracted in the Course of their Employment.

(Passed the 23rd day of April, A. D. 1915).

Be it enacted by the Governor, Council and Assembly, as follows:—

PRELIMINARY.

1. This Act may be cited as the Workmen's Compensation Act, 1915.

2. Interpretation.—In this Act—

(a) **Accident Fund.**—"Accident fund" shall mean the fund provided for the payment of compensation under this Act;

(b) **Association.**—"Association" shall mean any association or body of employers whose constitution shall have been approved by the Board as entitling it to represent any of the classes provided for in this Act or any sub-division or group of employers in such class;

(c) **Board.**—"Board" shall mean Workmen's Compensation Board;

(d) **Construction.**—"Construction" shall include reconstruction, repair, alteration and demolition;

(e) **Dependents.**—"Dependents" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death or who but for the incapacity due to the accident would have been so dependent;

(f) **Employer.**—"Employer" includes every person having in his service, under a contract or implied, any person engaged in any work in or about an industry within the scope of this Act and in respect of any such industry includes Municipal Corporations;

(g) **Employment.**—"Employment" means and refers to the whole or any part of any establishment, undertaking, trade or business within the scope of this Act, and in the case of any industry not as a whole within the scope of this Act includes any department or part of such industry as would if carried on separately be within the scope of this Act;

(h) **Industrial Disease.**—"Industrial disease" shall mean any of the diseases mentioned in the Schedule and any other disease which by the Regulations is declared to be an industrial disease;

(i) **Industry.**—"Industry" shall include establishment, undertaking trade and business;

(j) **Invalid.**—"Invalid" shall mean physically or mentally incapable of earning;

(k) **Member of the Family.**—"Member of the family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, and half-sister, and a person who stood in *loco parentis* to the workman or to whom the workman stood in *loco parentis* whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child, shall include such child, and where the workman is an illegitimate child, shall include his parents and grandparents;

(l) **Outworker.**—"Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under control or management of the person who gave out the articles or materials;

(m) **Regulations.**—"Regulations" shall mean regulations made by the Board under the authority of this Act;

(n) **Workman.**—"Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, expressed or implied, whether by way of manual labor or otherwise.

PART I.

SCOPE OF THIS PART.

3. Application of Part 1.—Persons Exempted.—This Part shall apply to employers and workmen in or about the industries of lumbering, mining, quarrying, fishing, manufacturing, building, construction, engineering, transportation, operation of railway, telegraph, telephone, electric power lines, water works, sewers and other public utilities, navigation, operation of boats, ships, tugs and dredges, stevedoring, operation of grain elevators and warehouses; teaming, scavenging and street cleaning; painting, decorating and renovating; dyeing and cleaning; the operation of laundries, or any occupation incidental thereto or immediately connected therewith, provided that, subject to sections 5 and 6 of this Part, shall not apply to the following:—

(a) Persons engaged in office or other clerical work, and not exposed to the hazards incident to the nature of the work carried on in the industry;

(b) Persons whose employment is of a casual nature, and who are employed otherwise than for the purpose of the employer's trade or business;

(c) Outworkers;

(d) Persons employed by a city, town or municipal corporation as members of a police force, or of the fire department;

(e) Members of the family of the employer.

4. Certain Companies, when Allowed to Contract out.—

(1) If the Board, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favorable to the general body of workmen and their dependents than the provisions of this Part, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Part, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Part shall apply, notwithstanding any contract to the contrary made after the commencement of this Act.

(2) The Board may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew, with or without modification, such a certificate to expire at the end of the period for which it is renewed.

(3) If complaint is made to the Board by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favorable to the general body of workmen of such employer and their dependents as the provisions of this Part, or that the provisions of such scheme are being violated or that the scheme is not being fairly administered, or that other satisfactory reasons exist for revoking the certificate, the Board shall examine into the complaint, and, if satisfied that good cause exists for such complaint shall, unless the cause of the complaint is removed, revoke the certificate.

(4) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Board.

(5) This section shall apply only to the employers and workmen in the industries carried on within the Island of Cape Breton by—

(a) The Dominion Steel Corporation (including any of the Companies composing such corporation); and

(b) The Nova Scotia Steel & Coal Company, Limited.

(6) No certificate shall be given under the provisions of this section, and no application therefore shall be considered by the Board, without the assent of a majority of the workmen affected thereby, expressed on a plebiscite to be taken by a secret ballot under regulations to be made in that behalf by the Government-in-Council.

5. Industry or Workman not Within Part, how Admitted.—

(1) Any industry or workman not within the scope of this Part by virtue of section 3, may, on the application of the employer, be admitted by the Board as being within the scope of this Part on such terms and conditions and for such period and from time to time as the Board may prescribe, and from and after such admission and during the period of such admission, such industry or workman shall be deemed to be within the scope of this Part.

(2) Any employer in any industry within the scope of this Part may be admitted on such terms and conditions as for such period and from time to time as the Board may prescribe as being entitled, for himself or his dependents, as the case may be, to the same compensation as if such employer were a workman within the scope of this Part.

(3) Such admission may be made in such manner and form as the Board may deem adequate and proper.

6. Board may Exclude Industries.—The Board may by regulation exclude from the scope of this Part any industry or industries in which not more than a stated number (fixed by such regulation) of workmen are usually employed. The Board may from time to time revoke, alter or modify any such regulation, provided that any industry so excluded may be re-admitted by the Board as being within the scope of this Part as provided by section 5.

COMPENSATION.

7. Compensation to Workmen.—(1) Where, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of employment is caused to a workman, compensation as hereinafter provided shall be paid to such workman, or his dependents, as the case may be, except where the injury—

(a) **Exceptions.**— Does not disable the workman for the period of at least seven days from earning full wages at the work at which he was employed; or

(b) **Presumptions.**—Is attributable *solely* to the *serious and wilful misconduct* of the workman, *unless* the injury results in death or serious and permanent disablement.

(2) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

(3) **Compensation to date from disability.**—Where compensation for disability is payable it shall be computed and be payable from the date of the disability.

8. Board may Order Compensation when Payable by Law of Another Place.—Where it appears that by the laws of any other province, country or jurisdiction, a workman or his dependents, if resident in Nova Scotia, would be entitled in respect of death or injury in such province, country or jurisdiction to compensation corresponding or equal to that provided in this Act, the Board may order that payments of compensation under this Act may be made to persons resident in such province, country or jurisdiction in respect of any workman killed or injured in Nova Scotia; but, save as in this section provided, nothing in this Act shall entitle any person not resident in Nova Scotia to compensation payments; provided that the Board may upon application grant leave from time to time to any workman or dependent resident in Nova Scotia at the time of the accident to reside out of Nova Scotia without thereby forfeiting the right to compensation payments under this Act.

9. Action may be Brought Where Workman Entitled to Recover Against Person Other than Employer.—(1) Where an accident happens to a workman in the course of his employment in such circumstances as entitle him or his dependants to an action against some person other than his employer the workman or his dependants if entitled to compensation under this Part may claim such compensation or may bring such action.

(2) Entitled to Difference Between Compensation Under Act and that Collected.—If such workman or his dependents bring such action and less is recovered and collected than the amount of the compensation to which such workman or dependents would be entitled under this Act, such workmen or dependents shall be entitled to compensation under this Part to the extent of the amount or amounts of such difference.

(3) Board, When Board, When Subrogated to Workman's Position.—If such workmen or dependents, or any of them have claimed compensation under this Part, the Board shall be subrogated to the position of such workman or dependent as against such other person for the whole or any outstanding part of the claim of such workman or dependent against such other person.

10. Action not to be Brought.—Nothing in section 9 shall give any right to an employer or to a workman within the scope of this Part to bring an action against any employer within the scope of this Part; but in any case where it appears to the satisfaction of the Board that a workman of an employer in any class was injured or killed owing to the negligence of an employer or the workman of an employer in another class, the Board may direct that the compensation awarded in any such case shall be charged against the class in which such last mentioned employer belongs.

11. Provisions of this Part in Lieu of all Actions.—The provisions of this part shall be in lieu of all rights and rights of action, statutory or otherwise, to which a workman or his dependents are or may be entitled against the employer of such workman in or by reason of any accident in respect of which compensation is payable hereunder, and no action in respect to such accident shall lie. (Amended by S. 18, C. 7, Acts 1916).

12. Compensation Cannot be Waived.—It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependents are or may become entitled under this Part, and every agreement to that end shall be absolutely void.

13. Wages not to be Deducted.—It shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of any of his workmen any part of any sum which the employer is or may become liable to pay into the accident fund or otherwise under this Part, or to require or to permit any of his workmen to contribute in any manner towards indemnifying the employer against any liability which he has incurred or may incur under this Part.

14. Compensation not Assignable or Liable to Attachment.—Unless with the approval of the Board, no sum payable as compensation or by way of commutation of any periodical payment

in respect of it shall be capable of being assigned, charged or attached, nor shall it pass by operation of law except to a personal representative, nor shall any claim be set off against it.

15. Compensation must be Claimed Within one Year.—

No compensation shall be payable under this Part in respect of any injury unless application for such compensation is made within one year after the occurrence of the injury.

THE WORKMAN'S COMPENSATION BOARD.

16. Board, Constitution of.—There is hereby constituted a commission for the administration of this Part to be called "The Workmen's Compensation Board," which shall consist of three members to be appointed by the Governor-in-Council, and shall be a body corporate.

17. Chairman and Vice-Chairman.—(1) One of the commissioners shall be appointed by the Governor-in-Council to be the chairman of the Board, and he shall hold that office while he remains a member of the Board, and another of the commissioners shall be appointed by the Governor-in-Council vice-chairman of the Board.

Powers.—(2) In the absence of the chairman, or in case of his inability to act, or if there is a vacancy in the office, the vice-chairman may act as and shall have all the powers of the chairman.

18. Provisions Where Commissioner is Absent, etc.—

(1) In the case of the death, illness, or absence from Nova Scotia of a commissioner or of his inability to act from any cause, the Governor-in-Council may appoint some person to act *pro tempore* in his stead, and the person so appointed shall have all the powers and perform all the duties of a commissioner.

(2) Sub-section 1 shall apply in the case of the chairman of the Board as well as the case of any other member of it.

19. Presumption as to Vice-Chairman.—Where the vice-chairman appears to have acted for or instead of the chairman, it shall be conclusively presumed that he so acted for one of the reasons mentioned in the next preceding sub-section.

20. Tenure of Office.—Each commissioner shall, subject to section 21, hold office during good behavior, but may be removed at any time for cause.

21. Age Limit.—Unless otherwise directed by the Governor-in-Council, a commissioner shall cease to hold office when he attains the age of 75 years.

22. Salaries.—The salary of the chairman, of the vice-chairman and of the other commissioner shall be determined by the Governor-in-Council, and such salaries shall be payable out of the Provincial revenue.

23. Quorum.—The presence of two commissioners shall be necessary to constitute a quorum of the Board.

24. Vacancies.—A vacancy in the Board shall not, if there remains two members of it, impair the authority of such two members to act.

25. Board's Powers.—The Board shall have the like powers as the Supreme Court for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents and things.

26. Office, Where Situated.—The offices of the Board shall be situated in the City of Halifax, and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, and in that case sittings may be held in any part of Nova Scotia.

27. Board May Regulate Proceedings.—The commissioners shall sit at such times and conduct their proceedings in such manner as they may deem most convenient for the proper discharge and dispatch of business.

28. Board may Appoint Officers.—(1) The Board shall appoint a secretary and a chief medical officer, and may appoint such auditors, actuaries, accountants, inspectors, officers, clerks and servants as the Board may deem necessary for carrying out the provisions of this part, and may prescribe their duties, and, subject to the approval of the Governor-in-Council, may fix their salaries and pay the same out of the accident fund.

(2) Every person so appointed shall hold office during the pleasure of the Board.

29. Board may Act upon Report.—(1) The Board may act upon the report of any of its officers, and any inquiry which it shall be deemed necessary to make may be made by any one of the commissioners or by an officer of the Board or some other person appointed to make the inquiry, and the Board may act upon his report as to the result of the inquiry.

(2) The person appointed to make the inquiry shall, for the purposes of the inquiry have all the powers conferred upon the Board by section 25.

30. Jurisdiction of Board.—1) The Board shall have jurisdiction to inquire into, hear and determine all matters and questions of fact and law necessary to be determined in connection with compensation payments and the administration thereof, and the collection and management of the funds therefor.

Funds, how Invested.—(2) The Board may in its discretion invest any funds arising under any provisions of this Part, and under its control, in any securities which are under the "Trustee Act" a proper investment for trust funds.

31. Board's Decision, Final Questions of Fact.—(1) Except as stated in sub-sections (2) and (5) of this section, the decisions and findings of the Board upon all questions of law and fact shall be final and conclusive, and in particular, but not so as to restrict the generality of the powers of the Board hereunder, the following shall be deemed to be questions of fact—

- (a) The question whether an injury has arisen out of or in the course of an employment within the scope of this Act;
- (b) The existence and degree of disability by reason of any injury;
- (c) The permanence of disability by reason of any injury;

- (d) The degree of diminution of earning capacity by reason of any injury;
- (e) The amount of average earnings;
- (f) The existence of the relationship of husband, wife, parent, child, brother or sister, as defined by this Act;
- (g) The existence of dependency;
- (h) The character for the purpose of this Act, of any employment, establishment or department and the class to which such employment, establishment or department should be assigned;
- (i) Whether or not any employee in any industry within the scope of this part is within the scope of this Part and entitled to compensation thereunder.

(2) **Appeal on Question of Law.**—An appeal shall lie to the Supreme Court *in banco* from any final decision of the Board upon any question as to its jurisdiction or upon any question of law, but such appeal can be taken only by permission of a judge of the said court, given upon a petition presented to him within fifteen days after the rendering of the decision, and upon such terms as said judge may determine. Notice of such petition shall be given to the Board, at least two clear days before the presentation of such petition.

Notice of Appeal, how and when Served.—Board's Powers.—

(3) Where an appeal has been granted, the appeal shall be brought by notice served on the chairman or vice-chairman of the Board within ten days after the permission to appeal has been granted. The notice shall contain the names of the parties and the date of the order appealed from, and such other particulars as the judge granting the appeal may require.

(4) On the hearing of such appeal any association representing a class interested in the result of the case shall be entitled to appear and be heard.

(5) The Board may of its own motion state a case in writing for the opinion of the Supreme Court *in banco* upon any question which in the opinion of the Board is a question of law.

(6) The Supreme Court shall hear and determine the question or questions of law arising thereon and remit the matter to the Board, with the opinion of the Court thereon.

(7) No costs shall be awarded in any appeal or case stated under this section.

32. Audit of Accounts.—The accounts of the Board shall be audited by the Provincial Auditor, or by an auditor appointed by the Governor-in-Council for that purpose, and the salary or remuneration of the last mentioned auditor shall be paid by the Board.

33. Board to make Report.—The Board shall on or before the 1st day of March in each year make a report to the Provincial Secretary of its transactions during the next preceding calendar year, and such report shall contain such particulars as the Governor-in-Council may prescribe.

34. Expenses, how Paid.—(1) All expenses incurred in the administration of this Part shall be paid out of the accident fund.

(2) To assist in defraying the expenses incurred in the admin-

istration of this Part, there shall be paid to the accident fund out of the Provincial treasury such annual sum, not exceeding \$25,000. as the Governor-in-Council may direct.

SCALE OF COMPENSATION.

35. Compensation in Case of Death.—(1) Where death results from an injury the amount of compensation shall be—

- (a) The necessary expenses of the burial of the workman, not exceeding \$75.00;
- (b) Where the widow or an invalid husband is the sole dependent, a monthly payment of \$20.00;
- (c) Where the dependents are a widow or an invalid widower and one or more children, a monthly payment of \$20, with an additional monthly payment of \$5 for each child under the age of 16 years, not exceeding in the whole \$40;
- (d) Where the dependents are children a monthly payment of \$10, under the age of 16 years not exceeding in the whole \$40;
- (e) Where the dependents are persons other than those mentioned in the foregoing clauses, a sum, reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, to be determined by the Board, but not exceeding \$20 per month to a parent or parents, and not exceeding in the whole \$30 per month.

(2) **Duration of Payments.**—In the case provided for in clause (e) of sub-section 1, the payments shall continue only so long as in the opinion of the Board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependents.

(3) **Compensation to Dependents.**—Where there are both total and partial dependents the compensation may be allotted partly to the total and partly to the partial dependents.

(4) **Compensation Not to Exceed 55 p.c. Average Earnings.**—Exclusive of the expenses of burial the compensation payable as provided by sub-section 1 shall not in any case exceed 55 per cent. of the average earnings of the workmen, and if the compensation payable under that sub-section would in any case exceed that percentage it shall be reduced accordingly, and where several persons are entitled to monthly payments the payments shall be reduced proportionately.

36. Marriage of Widow.—(1) If a dependent widow marries, the monthly payments to her shall cease, but she shall be entitled in lieu of them to a sum equal to the monthly payments for two years.

(2) **Exception.**—Sub-section 1 shall apply to payments to a widow in respect of a child.

37. When Payment Child Ceases.—(1) Payments in respect of a child shall cease when the child attains the age of 16 years or dies.

(2) **Dependents Remaining Entitled to Compensation.**—Where a payment to any one of a number of dependents ceases, the remaining dependents shall be entitled to receive the same com-

pensation as though they had been the only dependents at the time of the death of the workman.

38. Permanent Total Disability.—Where permanent total disability results from the injury the amount of the compensation shall be a periodical payment during the life of the workman equal to 55 per cent. of his average earnings during the previous twelve months if he has been so long employed, but if not then for any less period during which he has been in the employment of his employer.

39. Permanent Partial Disability.—(1) Where permanent partial disability results from the injury, the compensation shall be a periodical payment of 55 per cent. of the difference between the average earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident, and the compensation shall be payable during the lifetime of the workman.

(2) Notwithstanding the provisions of sub-section 1, where in the circumstances the amount which the workman is able to earn after the accident has not been substantially diminished, the Board may, nevertheless, recognize an impairment of earning capacity, and may allow a lump sum in compensation.

40. Temporary Total Disability.—(1) Where temporary total disability results from the injury, the compensation shall be payable only so long as the disability lasts.

(2) **Temporary Partial Disability.**—Where temporary partial disability results from the injury, the compensation shall be the same as that prescribed by section 38, but shall be payable only so long as the disability lasts.

41. Average Earning Defined.—"Average earning" and "earning capacity" shall mean and refer to the average earnings or earning capacity at the time of the injury, and may be calculated upon the daily, weekly or monthly wages or other regular remuneration which the workman was receiving at the time of the injury or upon the average yearly earnings of the workman for three years prior to the injury, or upon the probable yearly earning capacity of the workman at the time of injury as may appear to the Board best to represent the actual loss of earnings suffered by the workman by reason of the injury, but not so as in any case to exceed the rate of \$1,200 per year.

42. Matters to be Considered in Fixing Payments.—(1) In fixing the amount of a weekly or monthly payment regard shall be had to any payment, allowance or benefit which the workman may receive from his employer during the period of his disability, including any pension, gratuity or other allowance provided wholly at the expense of the employer.

(2) Where the compensation is payable, any sum deducted from the compensation under sub-section 1 may be paid to the employer out of the accident fund.

43. Workman or Dependent to File Claims, etc.—(1) Where any workman or dependent is entitled to compensation under this Part he shall file with the Board an application for such compensation, together with the certificate of the attending physician, if any.

and such further or other proofs of his claim as may be required by the Board.

(2) **Duty of Physician or Surgeon.**—It shall be the duty of every physician or surgeon attending or consulted upon any case of injury to any workman to furnish or cause to be furnished from time to time such reports and in such form as may be required by the Board in respect of such injury.

(3) It shall also be the duty of every physician in attendance upon any injured workman to give all reasonable and necessary information, advice and assistance to enable such workman or his dependents, as the case may be, to make application for compensation, and to furnish such proofs as may be required by the Board.

(4) **Employer's Duty Where Accident.**—It shall be the duty of every employer, within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages, to notify the Board in writing of the—

- (a) happening of the accident and nature of it;
- (b) time of its occurrence;
- (c) name and address of the workman;
- (d) place where the accident happened;
- (e) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury;
- (f) any other particulars required by regulation of the Board.

(5) It shall be the duty of the employer to make such further and other reports respecting such accident and workman as may be required by the Board.

44. Compensation, how Payable.—Payments of compensation shall be made in such manner and in such form as may appear to the Board to be most convenient, and in the case of minors or persons of unsound mind, payments may be made to such persons as, in the opinion of the Board, are best qualified in all the circumstances to administer such payments, whether or not the person to whom the payment is made is the legal guardian of such minor or person of unsound mind.

45. Lump Sum.—(1) The Board may, in its discretion, commute the whole or any part of the payments due or payable to the workman or any beneficiaries for a lump sum in lieu of such payments to be applied as directed by the Board.

(2) **Periodical Payments.**—The Board may, in its discretion, instead of paying any compensation payable in a lump sum, divide the compensation into periodical payments.

(3) **Operation or Treatment.**—Where in any case, in the opinion of the Board, it will conserve the accident fund to provide a special surgical operation or other special medical treatment for a workman, and the furnishing of the same by the Board is, in the opinion of the Board, the only means of avoiding heavy payment for permanent disability, the expense of such operation or treatment may be paid out of the accident fund.

46. Board may Re-open any Claim, etc.—The Board may re-open, re-hear, re-determine, review or re-adjust any claim, decision,

or adjustment, either because an injury has proven more serious or less serious than it was deemed to be, or because a change has occurred in the condition of a workman or in the number, circumstances or condition of dependents or otherwise.

47. Payments in Case of Minors.—Where the workman was at the date of the accident under twenty-one years of age and the review takes place more than six months after the accident, the amount of a periodical payment may be increased to the sum to which he would have been entitled if his average earnings had at the date of the accident been equal to what, if he had not been injured he would probably have been earning at the date of the review.

48. Workmen Subject to Medical Examination.—(1) The Board may from time to time require that any workman applying for or receiving compensation payments shall submit to medical examination by the Board or its duly appointed officers; and in default of such requirement being complied with, may withhold such compensation payments.

(2) The Board may require such proof from time to time of the existence and condition of any dependents in receipt of compensation payments as may be deemed by the Board necessary.

ACCIDENT FUND AND ASSESSMENT.

49. Accident Fund.—The compensation provided for in this Act shall be paid out of a fund to be called "The Accident Fund."

50. Industrial Classes.—For the purpose of creating and maintaining the accident fund, all industries within the scope of this Act shall, subject to sections 51 and 52, be divided into the following classes—

Class 1—Lumbering, logging, saw-mills, manufacture of pulp or paper.

Class 2—Wood-working, planing mills, furniture factories, piano or organ factories, co-operation.

Class 3—Coal mining.

Class 4—Mining (other than coal), reduction of ores and smelting, quarrying, manufacture of brick or lime.

Class 5—Manufacture of iron and steel, and iron and steel products.

Class 6—Car-shops, manufacture of vehicles.

Class 7—Manufacture of compounds, paints, chemicals, liquors or beverages.

Class 8—Manufacture of leather, leather goods, rubber or rubber goods.

Class 9—Flour-milling and handling of grain, canning, pork-packing, manufacture of food products, tobacco and tobacco products.

Class 10—Manufacture of cloth, textiles and clothing.

Class 11—Printing, lithographing, engraving, manufacture of stationery.

Class 12—Teaming, cartage, warehousing and storage.

Class 13—Construction of buildings and wooden ships, mason work, structural carpentry, plumbing and painting.

Class 14—Steel erection, steel bridge building, steel ship building.

Class 15—Road-making, sewer construction, excavation.

Class 16—Sub-aqueous construction, dredging, pile driving.

Class 17—Construction and operation of electric railways, electric power lines and appliances.

Class 18—Construction and operation of telegraphs and telephones.

Class 19—Construction and operation of steam railways.

Class 20—Navigation and stevedoring.

51. Board may Re-arrange Classes.—The Board may by regulation re-arrange any of the classes mentioned in section 50 or withdraw from any class, any industry or group of industries included therein, and transfer such industry or group of industries to any other class, or form it into a separate class or may make new classes.

52. Board to Assign Industry to Proper Class.—The Board shall assign every industry within the scope of this Part to its proper class, and where any industry includes several departments assignable to different classes, the Board may either assign such industry to the class of its principal or chief department, or may, for the purpose of this Act, divide such industry into two or more departments, assigning each of such departments to its proper class.

53. Estimate of Assessments.—The Board shall on or before the first day of January of each year make an estimate of the assessments necessary to provide funds in each of the classes sufficient to meet all claims for compensation payable during the succeeding year.

54. Board to Assess and Levy.—The Board shall every year assess and levy upon and collect from the employers in each class by an assessment rated upon the payroll, or otherwise as the Board may deem proper, sufficient funds to meet all claims payable during the year.

55. Separate Accounts to be Kept.—Separate accounts shall be kept of the amounts collected and expended in respect of every class and of every fund set aside by way of reserve, but for the purpose of paying compensation the accident fund shall, nevertheless, be deemed one and indivisible.

56. Board may Assess for Reserves.—(1) The Board may, in addition to the amount actually required in each class for the year, assess, levy and collect from any class or classes a surcharge or surcharges to be set aside as a reserve or reserves—

- (a) by way of providing a contingent fund in aid of industries or classes which may become depleted or extinguished; or
- (b) by way of providing a sinking fund for the capitalization of periodical compensation payments in future years; or
- (c) by way of setting up a reserve fund for the equalizing of assessments; or
- (d) for the purpose of raising a special fund to be used to meet the loss arising from any disaster or other circumstance which in the opinion of the Board would unfairly burden the employers in any class.

(2) The Board may, in respect of any industry or class where it is deemed expedient, assess, levy and collect in each year a sufficient amount to provide capitalized reserves which shall be deemed sufficient to meet the periodical payments accruing in future years in respect of all accidents during such year.

(3) Upon any such change being made as provided in section 52, the Board may make such adjustment and disposition of the funds, reserves and accounts of the classes affected as may be deemed just and expedient.

57. Board may Sue for Unpaid Assessments.—(1) Every employer shall pay into the accident fund such assessments as may be levied by the Board, and if any assessment or any part thereof is not duly paid in accordance with the terms of the levy, the Board shall have a right of action against the employer in respect of any amount unpaid, together with costs of such action.

(2) Assessments may be made in such manner and form and by such procedure as the Board may deem adequate and expedient, and may be general as applicable to any class or sub-class, or special as applicable to any industry or part or department of an industry.

(3) Where an employer engages in any of the industries within the scope of this Part and has not been assessed in respect of it, the Board, if it is of opinion that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the Board of a sum sufficient to pay the assessment for which the employer would have been liable if the industry had been in existence when the next preceding assessment was made.

58. Board may give Notice Amount of Assessments.—The Board shall give notice to each employer in such manner as may be deemed by the Board proper and sufficient, of the amount of the assessments due from time to time in respect of his industry or industries and the time or times when such assessments are due and payable.

59. Employer's Duty to pay Without Demand.—Notwithstanding any provision of this Part respecting estimates of pay-rolls and notice to employers it shall be the duty of every employer, without demand from the Board, to cause to be paid to the Board the full amount of every assessment assessed or levied in accordance with this Part in respect to workmen in his employ who are entitled to compensation hereunder.

60. Board may Classify Rates.—The Board may establish such sub-classifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be deemed just; and where any particular industry is shown to be so circumstanced or conducted that the hazard is greater than the average of the class to which such industry is assigned, the Board may impose upon such industry a special rate, differential or assessment, to correspond with the excessive hazard of such industry.

61. Board may make Additional Assessments.—If in any class the estimated assessment shall prove insufficient, the Board may make such further assessments and levies as may be necessary,

or may temporarily advance the amount of and deficiency out of any reserve, and may add such amount to any subsequent assessment or assessments.

62. Assessments, when Collected.—Assessments may, wherever it is deemed expedient, be collected in half-yearly, quarterly or monthly instalments, or otherwise; and where it appears that the funds in any class are sufficient for the time being, any instalment may be abated or its collection deferred.

63. Assessment to be Adjusted March 1st.—On or before the first day of March in each year the amount of the assessment for the preceding calendar year shall be adjusted upon the actual requirements of the class and upon the correctly ascertained payroll of each industry, and the employer shall forthwith make up and pay to the Board any deficiency, or the Board shall refund to the employer any surplus, or credit the same upon the succeeding assessment as the case may require.

64. Assessment, how Levied, Where Change of Ownership in Industry.—Where in any industry a change of ownership or employership has occurred, the Board may levy any part of such deficiency on either or any of such successive owners or employers, or pay or credit to any one or more of such owners such surplus as the case may require, but as between or amongst such successive owners the assessment in respect of such employment shall, in the absence of an agreement between the respective owners or employers determining the same, be apportionable, as nearly as may be, in accordance with the proportions of the payrolls of the respective periods of ownership or employment.

65. Payroll, how Adjusted.—In computing and adjusting the amount of the payroll of any industry, regard shall be had only to such portion of the payroll as represents workmen and work within the scope of this Part, and where the wages of any workman exceeds the rate of \$1,200.00 per year, due and proper deduction may be made in respect of any such excess.

66. Employer to Furnish Estimates.—Every employer shall, on or before a date to be fixed by the Governor-in-Council, or whenever thereafter he shall have become an employer within the meaning of this Act, or whenever required from time to time by the Board so to do, cause to be furnished to the Board an estimate or estimates of the probable amount of the payroll of each of his industries within the scope of this Part, together with such further and other information as may be required by the Board for the purpose of assigning such industry to the proper class or classes, and of making the assessments hereunder, and shall likewise at or after the close of each calendar year, or at such other times as may be required by the Board, furnish certified copies of reports of his payroll or payrolls, verified by statutory declaration, for the purpose of enabling the Board to adjust and compute the amount of the assessment as provided in section 65.

67. Provisions Respecting Unpaid Assessments.—(1) If an assessment or a special assessment is not paid at the time when it becomes payable, the defaulting employer shall be liable to pay and shall pay as a penalty for this default such a percentage upon the amount unpaid, as may be prescribed by the regulations or may be determined by the Board.

(2) Any employer who refuses or neglects to make or transmit any payroll return or other statement required to be furnished by him under the provisions of section 66, or who refuses or neglects to pay an assessment, special or supplementary assessment, or the provisional amount of any assessment, or any instalment or part thereof, shall in addition to any penalty or other liability to which he may be subject, pay to the Board the full amount or capitalized value, as determined by the Board, of the compensation payable in respect of any accident to a workman in his employ which happens during the period of such default, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be endorsed.

(3) The Board, if satisfied that such default was excusable, may in any case relieve such employer in whole or in part from liability under this section.

68. Board to Issue Certificate When Payment in Default.—

Where default is made in the payment of any assessment or special assessment, or any part of it, the Board may issue its certificate stating that the assessment was made the amount remaining unpaid on account of it and the person by whom it was payable and such certificate or a copy of it certified by the secretary to be a true copy, may be filed with the clerk of any County Court, and when so filed shall become an order of that court, and may be enforced as a judgment of the court against such person for the amount mentioned in the certificate.

69. Board or Officer to Examine Employer's Books.—

The Board and any member of it, and any officer of the Board or person authorized by it for that purpose, shall have the right to examine the books and accounts of the employer, and to make such other inquiry as the Board may deem necessary for the purpose of ascertaining whether any statement furnished to the Board under the provisions of section 66 is an accurate statement of the matters which are required to be stated therein or of ascertaining the amount of the payroll of any employer, or of ascertaining whether any industry or person is under the operation of this Part.

70. Board or Officer may take Affidavits, etc.—

Every member of the Board and every officer or person authorized by it to make examination or inquiry under this section shall have power and authority to enquire and to take affidavits, affirmations or declarations as to any matter of such examination or inquiry, and to take statutory declarations required under section 66, and in all such cases to administer oaths, affirmations and declarations and certify to the same having been made.

71. Board or Officer to Enter Premises, etc.—

The Board and any member of it and any officer or person authorized by it for that purpose, shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the accident fund, and the premises connected with it, and every part of them, for the purpose of ascertaining whether the ways, works, machinery or appliances therein are safe, adequate and sufficient, and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises, and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the Board may deem necessary for the purpose of determining the proportion in which such employer should contribute to the accident fund.

72. Information not to be Divulged.—No officer of the Board and no person authorized to make an inquiry under this Part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the Board, any information obtained by him or which has come to his knowledge in making or in connection with an inspection or inquiry under this Part.

LIABILITY FOR ASSESSMENT.

73. Municipal Corporation may Deduct Moneys due Contractor.—Where any work within the scope of this Part is performed under contract for any municipal corporation or public service commission, any assessment in respect of such work may be paid by such corporation or commission, as the case may be, and the amount of such premium deducted from any moneys due the contractor in respect of such work.

74. Contractor and Person for Whom Work Done when Both is Liable.—(1) Where any work within the scope of this Part is undertaken for any person by a contractor, both the contractor and the person for whom such work is undertaken shall be liable for the amount of any assessment in respect thereof, and such assessment may be levied upon and collected from either of them or partly from one and partly from the other; provided that in the absence of any term in the contract to the contrary the contractor shall, as between himself and the person for whom the work is performed, be primarily liable for the amount of such assessment.

(2) Where any work within the scope of this Part is performed under sub-contract, both the contractor and the sub-contractor shall be liable for the amount of the premiums in respect of such work; any such premiums may be levied upon and collected from either, or partly from one and partly from the other; provided that in the absence of any term in the sub-contract to the contrary the sub-contractor shall as between himself and the contractor be primarily liable for such premiums.

75. Liability of Owner Under Mechanics' Lien Act for Contribution of Employer to Accident Fund.—In the case of a work or service performed by an employer in any of the industries within the scope of this Part, for which the employer would be entitled to a lien under the Mechanics' Lien Act, it shall be the duty of the owner as defined by that Act to see that any sum which the employer is liable to contribute to the accident fund is paid, and if any such owner fails to do so he shall be personally liable to pay it to the Board, and the Board shall have the like powers and be entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

76. Assessments to be Included as Debts, etc.—There shall be included among the debt which under "The Assignments Act," "The Companies' Winding Up Act," and "The Trustee Act," are, in the distribution of the property in the case of an assignment or death or in the distribution of the assets of a company being wound up under the said Acts, respectively, to be paid in priority to all other debts, the amount of any assessment the liability whereof accrued before the date of the assignment or death or before the date of the commencement of the winding up, and the said Acts shall have effect accordingly.

77. Board may make Regulations.—The Board may make such regulations as may be deemed requisite for the due administration and carrying out of the provisions of this Part, and may likewise prescribe the form and use of such payrolls, records, reports, certificates, declarations and documents as may be requisite.

78. Penalties.—The Board may prescribe penalties for the violation of any of the provisions of this Act, or for the breach of any rules, regulations or orders made under the authority of this Act, provided that such penalties shall be approved by the Governor-in-Council.

79. Penalties, how Recovered.—The penalties imposed by or under the authority of this Part shall be recoverable under the Summary Convictions Act or by an action brought by the Board, in any court of competent jurisdiction, and such penalties when collected shall be paid over to the Board, and shall form part of the accident fund.

ASSOCIATIONS.

80. Association's Rules, when Binding.—(1) Where any Association shall make rules for the prevention of accidents in the industry or industries represented by such Association, such rules shall, if approved by the Board, be binding on all the employers included in the class, sub-class or group represented by such Association whether or not such employers are members of such Association.

(2) **Salary and Expenses, etc., how Charged.**—Where an Association under the authority of its rules, appoints one or more inspectors, engineers or experts for the purpose of accident prevention, the Board may pay the salary and necessary expenses of any such inspector, engineer or expert out of the accident fund and charge the same to the account of the proper class, sub-class or group.

(3) **Board may Make an Allowance.**—The Board may on the application of any Association make an allowance to such Association to meet any expenses of such Association and pay such allowance out of the accident fund and charge the same to the account of the class, sub-class or group represented by such Association.

INDUSTRIAL DISEASES.

81. Certain Industrial Diseases Deemed Accidents.—(1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed, or his death is caused by an industrial disease, and the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments, the workman or his dependents shall be entitled to compensation as if the disease were a personal injury by accident and the disablement were the happening of the accident, subject to the modifications hereinafter mentioned, unless at the time of entering into the employment he had wilfully and falsely represented himself as not having previously suffered from the disease.

(2) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of the Schedule here and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

(3) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply, if the disease is the result of an injury in respect of which he is entitled to compensation under this Part.

82. This Part when Effective.—The provisions of this Part relating to the organization of the Board, the classification of industries, and levying and collecting of assessments, or any of them shall become effective from and after a day to be named in a proclamation by the Governor-in-Council; the provisions of this Part respecting the payment of compensation and the right of the workman thereto shall become effective from and after a day to be named in any subsequent proclamation by the Governor-in-Council, and compensation shall be payable in respect of injuries occurring on and after the day named in such last mentioned proclamation, on which day also the Workmen's Compensation Act, Chapter 3 of the Acts of 1910, and amendments thereto, shall stand repealed.

83. Application of Part.—This Part shall not apply to farm laborers, or domestic or mental servants or their employers.

PART II.

84. Application Certain Sections.—Subject to Section 83, Section 85 to 87, shall apply only to the industries to which Part I does not apply and to the workmen employed in such industries.

85. Liability of Employer for Defective Ways, etc.—(1) Where personal injury is caused to a workman by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of his employer or by reason of the negligence of his employer or any person in the service of his employer, acting within the scope of his employment, the workman, or if the injury results in death, the legal personal representative of the workman, and any person entitled in case of death shall have an action against the employer and if the action brought by the workman he shall be entitled to recover from the employer the damages sustained by the workman by or in consequence of the injury, and if the action is brought by the legal personal representative of the workman or by or on behalf of persons entitled to damages under the Fatal Injuries Act, they shall be entitled to recover such damages as they are entitled to under that Act.

(2) **Liability of Person Supplying Defective Ways, Works, Plant, etc.**—Where the execution of any work is being carried into effect under any contract, and the person for whom the work is done owns or supplies any ways, works, machinery, plant, building or premises, and by reason of any defect in the condition or arrangement of them, personal injury is caused to a workman employed by the contractor or by any sub-contractor, and the defect arose from the negligence of the person for whom the work or any part of it is done or of some person in his service and acting within the scope of his employment, the person for whom the work or that part of the work is done shall be liable to the action as if the workman had been employed by him, and for that purpose shall be deemed to be the employer of the workman within the meaning of this Act, but any such contractor or sub-contractor shall be liable to the action as if this sub-section had not been enacted, but not so that double damages shall be recoverable for the same injury.

(3) Nothing in Sub-section 2 shall affect any right or liability of the person for whom the work is done and the contractor or sub-contractor as between themselves.

(4) A workman shall not by reason only of his continuing in the employment of the employer with knowledge of the defect or negligence which caused his injury be deemed to have voluntarily incurred the risk of the injury.

86. Common Law, Rules Abrogated.—A workman shall hereafter be deemed not to have undertaken the risks due to the negligence of his fellow-workman, and contributory negligence on the part of a workman shall not hereafter be a bar to recovery by him or by any person entitled to damage under the Fatal Injuries Act, in an action for the recovery of damages for an injury sustained by, or causing the death of the workman while in the service of his employer, for which the employer would otherwise have been liable.

87. Contributory Negligence Considered in Assessing Damages.—Contributory negligence on the part of the workman shall nevertheless be taken into account in assessing the damages in any such action.

88. Application of Part.—This Part shall not apply to farm laborers or domestic or menial servants or their employers.

89. Date when Part to take Effect.—This Part shall take effect on, from and after a day to be named in a proclamation by the Governor-in-Council.

SCHEDULE.

Description of Diseases.	Description of Process.
Anthrax.	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelae.	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelae.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelae.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelae.	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis.	Mining.

PROVINCE OF MANITOBA

“WORKMEN'S COMPENSATION ACT.”

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CHAPTER 125

An Act to Provide for Compensation to Workmen for Injuries sustained in the Course of their Employment.

[Assented to March 10th, 1916]

HIS MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Manitoba, enacts as fol-
lows:—

PRELIMINARY.

1. Short Title.—This Act may be cited as The Workmen's Com-
pensation Act.

2. (1) Interpretation.—In this Act

(a) **"Accident."**—"accident" shall include a wilful and an intentional act, not being the act of the workman and a fortuitous event occasioned by a physical or natural cause;

(b) **"Board."**—"board" shall mean workmen's compensation board;

(c) **"Construction."**—"construction" shall include re-construction, repair, alteration and demolition;

(d) **"Dependents."**—"dependents" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death or who, but for the incapacity due to the accident, would have been so dependent;

(e) **"Employer."**—"employer" shall include every person having in his service under a contract for hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry, and where the services of a workman are temporarily let or hired to another person by the person with whom the workman has entered into such a contract the latter shall be deemed to continue to be the employer of the workman whilst he is working for that other person;

(f) **"Employment."**—"employment" shall include employment in an industry or any part, branch or department of an industry;

(g) **"Industry."**—"industry" shall include establishment, undertaking, trade and business;

(h) **"Invalid."**—"invalid" shall mean physically or mentally incapable of earning;

(i) **"Manufacturing."**—"manufacturing" shall include altering, making, preparing, repairing, ornamenting, printing, finishing, packing, assembling the parts of and adapting for use or sale any article or commodity;

(j) **"Medical Referee."**—"medical referee" shall mean medical referee appointed by the board;

(k) **"Member of the Family."**—"member of the family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, and half-sister, and a person who stood in *loco parentis* to the workman or to whom the workman stood in *loco parentis*, whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child, shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents;

(l) **"Outworker."**—"outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials;

(m) **"Regulations."**—"regulations" shall mean regulations made by the board under the authority of this Act;

(n) **"Workman."**—"workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual

labour or otherwise, but when used in part I. shall not include an outworker, or a person engaged in clerical work and not exposed to the hazards incident to the nature of the work carried on in the employment.

(2) **Exercise and Performance of Powers and Duties of.**—The exercise and performance of the powers and duties of

(a) **A Municipal Corporation.**—a municipal corporation;

(b) **The Greater Winnipeg Water District.**—the Greater Winnipeg Water District;

(c) **Any Commission or Board.**—any commission or board having the management and conduct of any work or service owned by or operated for a municipal corporation or for the Province of Manitoba;

(d) **A School Board.**—a school board;

Deemed Trade or Business for Purposes of Act.—shall for the purposes of this Act be deemed the trade or business of the corporation, commission, board or school board, but the obligation to pay compensation under this Act shall apply only to such part of the trade or business as, if it were carried on by a company or an individual, would be an industry for the time being included within this Act and to workmen employed in or in connection therewith.

PART I.

COMPENSATION.

3. (1) **Compensation to Workmen**—Where in any employment to which this Part applies, personal injury by accident arising out of and in the course of the employment is, after a day to be named by proclamation of the Lieutenant-Governor-in-Council, caused to a workman, his employer shall be liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned except where the injury,

(a) **Exceptions.—Disabled Less Than Six Days.**—does not disable the workman for the period of at least six consecutive working days from earning full wages at the work at which he was employed, or,

(b) **Wilful Misconduct.**—is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

(2) **Arising in Course of Employment, Presumed.**—Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

(3) **Payable from Date of Disability.**—Where compensation for disability is payable it shall be computed and be payable from the date of the disability.

(4) **Casual Employment Excepted.**—This section shall not apply to a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business.

Eddles vs. Winnipeg School Board (1912), 22 M. R. 240.

A workman was employed to work at a school building. One of

his duties was to feed the furnaces with cordwood-sticks. On the morning of his accident his wife had seen him leave home in his usual good health and go to the school-building. Later in the morning she saw him come out of the school-building walking as if in pain and holding his hand against his side. It was found that he had sustained a rupture and he was advised to have an operation, from the results of which he died. On a claim being made by his dependents there was medical evidence brought to show that the work of lifting cordwood was likely to produce a rupture. The arbitrator also admitted statements made by the deceased to his doctor as to the cause of the rupture.

Held. (appeal), apart from the statements of the deceased as to the cause of the rupture and the admissibility of such statements, there was sufficient evidence to draw the inference that the rupture was a personal injury by accident arising out of and in the course of the employment.

4. Employees Individually Liable.—Employers in the industries for the time being included in the schedule to this Act shall be individually liable to pay the compensation.

5. (1) Compensation When Employed Outside Province.—Where an accident happens while the workman is employed elsewhere than in Manitoba which would entitle him or his dependents to compensation under this Part if it happened in Manitoba, the workman or his dependents shall be entitled to compensation under this Part,

(a) **If Place of Business of Employer is in Manitoba.**—If the place or chief place of business of the employer is situate in Manitoba and the residence and the usual place of employment of the workman are in Manitoba, and his employment out of Manitoba has lasted less than six months; or,

(b) **If Accident on Steamboat, Railway, etc.**—if the accident happens on a steamboat, ship or vessel or on a railway and the workman is a resident of Manitoba and the nature of the employment is such that, in the course of the work or service which the workman performs, it is required to be performed both within and without Manitoba.

(2) **No Compensation Except as Provided by Sub-Section 1 where Accident Happens Outside of Manitoba.**—Except as provided by sub-section 1 no compensation shall be payable under this Part where the accident to the workman happens elsewhere than in Manitoba.

6. (1) Claimant to Elect Whether he Will Claim Under Manitoba Law, or Law in Force Elsewhere.—Where by the law of the country or place in which the accident happens the workman or his dependents are entitled to compensation in respect of it, they shall be bound to elect whether they will claim compensation under the law of such country or place or under this Part and to give notice of such election, and if such election is not made and notice given it shall be presumed that they have elected not to claim compensation under this Part.

(2) **When Notice of Election to be Given.**—Notice of the election shall be given to the employer and to the board within three months after the happening of the accident, or, in case it

results in death, within three months after the death or within such longer period as, either before or after the expiration of such three months, the board may allow.

7. (1) When a Dependent is not Resident of Manitoba.—Where a dependent is not a resident of Manitoba he shall not be entitled to compensation unless by the law of the place or country in which he resides the dependents of a workman to whom an accident happens in such place or country if resident in Manitoba would be entitled to compensation; and, where such dependents would be entitled to compensation under such law the compensation to which the non-resident dependent shall be entitled under this Part shall not be greater than the compensation payable in like case under that law.

(2) Board May Award Compensation to Non-Resident.—Notwithstanding the provisions of sub-section (1) the board may award such compensation, or sum in lieu of compensation, to any such non-resident dependent as may be deemed proper and may pay the same out of the accident fund or order it to be paid by the insurance company, underwriter or employer carrying his own insurance liable to pay same.

8. (1) Right of Workman to Claim Compensation or Take Action Against Person Other Than Employer.—Where an accident happens to a workman in the course of his employment under such circumstances as entitle him or his dependents to an action against some person other than his employer, the workman or his dependents, if entitled to compensation under this Part, may claim such compensation or may bring such action.

(2) Where Less Amount Recovered Than the Amount of Compensation Under the Act.—If an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependents are entitled under this Part, the difference between the amount recovered and collected and the amount of such compensation shall be payable as compensation to such workman or his dependents.

(3) Employer and Insurance Company may be Subrogated to the Rights of the Workman.—If the workman or his dependents elect to claim compensation under this Part the employer and insurance company and underwriter liable for the same shall be subrogated to the rights of the workman or his dependents and may maintain an action in his or their names against the person against whom the action lies.

(4) Notice of Election.—The election shall be made and notice of it shall be given within the time and in the manner provided by section 6, otherwise it shall be presumed that they have elected not to claim compensation under this Part.

9. (1) Liability of Principal the Same as That of Employer.—Where the compensation is payable by the employer under this Part and a person, in this section referred to as the principal, in the course of or for the purpose of his trade or business contracts with any other person, in this section referred to as the contractor, for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work the compensation which he would have been liable to pay if that workman had been immediately employed by him.

(2) **Where Sub-Section (1) Does Not Apply.**—Sub-section (1) shall not apply where the accident happens elsewhere than on or in or about the premises upon which the principal has undertaken to execute the work or which are otherwise under his control or management.

(3) **Sub-contractors to File Statements, Declarations, etc., Required Under the Act.**—Where a person, whether carrying on an industry included in the schedule to this Part or not, in this section referred to as the principal, contracts with any other person for the execution by or under the contractor of the whole or any part of any work for the principal, it shall be the duty of the principal to see that such contractor files the statements, declarations and policies required by this Part and, if any such principal fails to do so, he shall be liable to the penalties provided by section 71 hereof.

(4) **Employer's Responsibility for Claim Against Principal.**—Where compensation is claimed from the principal under this Part, reference to the principal shall be substituted for reference to the employer, except that the amount of the compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

(5) **Amount of Indemnity to Principal Determined by Board.**—Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and the amount of any such indemnity shall be determined by the board.

(6) **Workman May Claim from Contractor Instead of Principal.**—Nothing in this section shall prevent a workman claiming through the board compensation under this Part from the contractor instead of the principal.

10. No Compensation Unless Workman was on Payroll of Employer, etc.—Where compensation is payable under this Part, a member of the family of any employee or the dependents of such member shall not be entitled to compensation unless such member was at the time of the accident carried on the pay-roll of the employer and his wages were included in the then last statement furnished to the board under section 71; nor, for the purpose of determining the compensation, shall his earnings be taken to be more than the amount of his wages, as shown by such pay-roll and the statement.

11. Claims for Compensation to be Heard and Determined by Board.—No action shall lie for the recovery of the compensation, but all claims for compensation shall be heard and determined by the board, without the intervention of counsel or solicitors on either side except with the express permission of the board.

12. Workman Receiving Periodical Compensation Forfeits Same on Leaving Province in Certain Cases.—Except Medical Certificate that Injury Likely Permanent.—If a workman receiving a weekly or other periodical payment as compensation under this Part ceases to reside in Manitoba, he shall not thereafter be entitled to receive any such payment unless a medical referee certifies that the disability resulting from the injury is likely to be of a permanent nature, and, if a medical referee so certifies and the board so directs, the workman shall be entitled quarterly to the

amount of the weekly or other periodical payments accruing due, if he proves, in such manner as may be prescribed by the regulations, his identity and the continuance of the disability in respect of which the same is payable.

13. (1) Compensation to be in Lieu of all Actions and Rights of Action Against Employer.—The right to compensation provided by this Part shall be in lieu of all rights and rights of action, statutory or otherwise, to which a workman or his dependents are or may be entitled against the employer of such workman for or by reason of any accident which happens to him while in the employment of such employer, after the day named by proclamation as mentioned in section 3, and no action in respect thereof shall thereafter lie.

(2) Board to Adjudicate on Question of Right to Compensation.—Any party to an action may apply to the board for adjudication and determination of the question of the plaintiff's right to compensation under this Part and as to whether the action is one the right to bring which is taken away by this Part, and such adjudication and determination shall be final and conclusive.

14. Workman Not to Agree With Employer to Waive any of the Benefits of Act.—It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependents are or may become entitled under this Part and every agreement to that end shall be absolutely void.

15. Unlawful for Employer Liable to Pay Compensation to Deduct Wages of Workman.—It shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of his workmen any part of any sum which the employer is or may become liable to pay the workman as compensation under this Part or to require or to permit any of his workmen to contribute in any manner towards indemnifying the employer against any liability which he has incurred or may incur under this Part.

16.—Penalty for Contravention of Section 15.—Every person who contravenes any of the provisions of the last preceding section shall, for every such contravention, incur a penalty not exceeding \$50 and shall also be liable to repay to the workman any sum which has been deducted from his wages or which he has been required or permitted to pay in contravention of the last preceding section.

17. Sums Payable as Compensation Not to be Assigned or Attached.—Unless with the approval of the board no sum payable as compensation or by way of commutation of any weekly or other periodical payment in respect of it shall be capable of being assigned, charged or attached, nor shall it pass by operation of law except to a personal representative, nor shall any claim be set off against it.

18. (1) Notice of Accident to be Given.—Limit of Time for Claiming Compensation.—Subject to sub-section (5) of this section compensation shall not be payable unless notice of the accident is given as soon as practicable after the happening of it and before the workman has voluntarily left the employment in which he was injured and unless the claim for compensation is made within six months from the happening of the accident or resulting from the accident in case of death within six months from the time of death.

(2) **Nature of Notice.**—The notice shall give the name and address of the workman and shall be sufficient if it states in ordinary language the cause of the injury and where and when the accident happened.

(3) **Mode of Service of Notice.**—The notice may be served by delivering it or sending it by registered post addressed to the place of business or the residence of the employer, or where the employer is a body of persons corporate or unincorporate, by delivering it at or sending it by registered post addressed to the employer at the office or, if there are more offices than one, at any of the offices of such body or persons.

(4) **Service of Notice on the Board.**—The notice shall also be given to the board by delivering it to or at the office of the secretary or by sending it to him by registered post addressed to his office.

(5) **Failure to Give Notice, no Bar to Compensation in Certain Cases.**—Failure to give the prescribed notice or any defect or inaccuracy in a notice shall not bar the right to compensation if in the opinion of the board the employer was not prejudiced thereby or if the board is of the opinion that the claim for compensation is a just one and ought to be allowed.

Smith vs. C. N. R. (1914), 7 W. W. R. 596.

Where there has been no proper notice of the accident given, the onus is on the applicant to show that there is either reasonable cause or that the employer has not been prejudiced by the defect.

19. (1) Medical Examination of Applicant may be Required.—A workman who claims compensation or to whom compensation is payable under this Part shall, if so required by his employer, submit himself for examination by a duly qualified medical practitioner provided and paid for by the employer and shall, if so required by the board, submit himself for examination by a medical referee.

(2) **Examination in Accordance with Regulations.**—A workman shall not be required at the request of his employer to submit himself for examination otherwise than in accordance with the regulations.

20. (1) If Medical Report Unsatisfactory to Workman or Employer, Matter may be Referred to Referee.—Where a workman has upon the request of his employer submitted himself for examination, or has been examined by a duly qualified medical practitioner selected by himself, and a copy of the report of the medical practitioner as to the workman's condition has been furnished in the former case by the employer to the workman and in the latter case by the workman to the employer, the board may, on the application of either of them, refer the matter to a medical referee.

(2) **Medical Referee to Report to Board.—When Certificate Final.**—The medical referee to whom a reference is made under the next preceding sub-section, or who has examined the workman by the direction of the board under sub-section (1) of section 19, shall certify to the board as to the condition of the workman and his fitness for employment, specifying where necessary the kind of employment, and his certificate, unless the board otherwise directs, shall be conclusive as to the matters certified.

(3) **Workman Refusing to Submit to Medical Examination.—Suspension of Rights.**—If a workman does not submit himself for examination when required to do so as provided by sub-section (1) of section 19, or on being required to do so does not submit himself for examination to a medical referee under that sub-section or under sub-section (1) of this section, or in any way obstructs any examination, his right to compensation, or if he is in receipt of a weekly or other periodical payment, his right to it shall be suspended until such examination has taken place.

21. Cost of Special Surgical Operations in Certain Cases.—Where in any case in the opinion of the board the provision of a special surgical operation or other special medical treatment for a workman and the furnishing of the same by the board will be a means of avoiding heavy payment for permanent disability, the amount of the cost thereof shall be payable as compensation in addition to the amounts hereinafter mentioned.

22. Payments may be Varied from Time to Time.—Any weekly or other periodical payment to a workman may be reviewed at the request of the employer or of the workman, and on such review the board may put an end to or diminish or may increase such payment to a sum not beyond the maximum hereinafter described.

23. Payments may be Increased When Workman Becomes of age.—Where the workman was at the date of the accident under twenty-one years of age and the review takes place more than six months after the accident, the amount of a weekly payment may be increased to the sum to which he would have been entitled if his average earnings at the date of the accident had been equal to what if he had not been injured he would probably have been earning at the date of the review.

24. (1) Periodical Payments on Request may be Commuted for Lump Sum.—The board, on application in that behalf, may, with the consent of the workman or dependent to whom it is payable, but not otherwise, commute the weekly or other periodical payments payable to a workman or a dependent for a lump sum.

(2) **To be Paid to the Board.**—The lump sum shall be paid to the board.

(3) **Application.**—The lump sum may be:—

(a) **As Workman May Direct.**—applied in such manner as the workman or dependent may direct; or

(b) **Paid to Workman.**—paid to the workman or dependent; or

(c) **Invested.**—invested by the board and applied from time to time as the board may deem most for the advantage of the workman or dependent; or

(d) **Paid to Trustees.**—paid to trustees to be used and employed upon and subject to such trusts and for the benefit of such persons as may be desired by the workman or dependent and approved by the board; or

(e) **Board to Decide Method of Application of Moneys.**—applied partly in one and partly in another or others of the modes mentioned in the above paragraphs as the board may determine.

25. Board May Advance Lump Sum.—Board to be Repaid Amount.—Where compensation is payable under this part the board may in any case where in its opinion the interest or pressing need of the workman or dependent warrants it, advance or pay to or for the workman or dependent such lump sum as the circumstances warrant and as the board may determine by order and the same shall immediately thereafter be recouped to the board by the employer, insurance company or underwriter liable.

26. Periodical Payments by Insurance Companies may be Commuted on Request.—Where an employer insured by a contract of insurance of an insurance company or any other underwriter is liable to make a weekly or other periodical payment to a workman or his dependents and the payment has continued for more than six months the liability may, if the board so directs, upon the application of the insurance company or underwriter liable, before the expiration of twelve months from the commencement of the disability of the workman or his death, if the accident resulted in death, be commuted by the payment of a lump sum and the company or underwriter shall pay the lump sum to the board, and it shall be dealt with in the manner provided by section 24.

27. Default in Insuring Employees—Board May Insure and Order Payment of Premium by Employer.—If any employer fails to insure his workmen and keep them insured against accidents in respect of which he may become liable to pay compensation in a company approved by the board for such amount as the board may direct, the board may cause them to be so insured and may make an order for the employer to pay to the board the cost of effecting such insurance and such order may be filed in the Court of King's Bench for Manitoba and enforced as hereinafter provided in section 60 hereof.

28. Compensation Payable to Board.—All compensation payable under this Part shall be paid to the board as hereinafter provided and shall be paid by the board to the person or persons entitled thereto as herein provided.

29. Notice of Claim to be Given Insurance Company.—Board Determines Question of Right.—Where a claim for compensation is made, notice of every such claim shall be given to the insurance company or other underwriter liable and to the employer and the board shall determine the question of the right of the workman or dependent to compensation and the amount of such compensation, subject to the provisions of this Part, and shall make an order as hereinafter provided.

30. Security for Payments Given by Employer in Cases of Permanent Disability.—Where the accident causes permanent disability, either total or partial, or the death of the workman, the insurance company or underwriter or employer liable shall give to the board such security as the board may deem sufficient for the future payments.

31. Right to Compensation Suspended.—Where a right to compensation is suspended under the provisions of this Part, no compensation shall be payable in respect of the period of suspension.

SCALE OF COMPENSATION.

32.—Compensation for Nursing, Care, etc.—In addition to any compensation payable under this Act the cost of medical attendance, nursing, care and maintenance rendered necessary by accident, as the board may deem reasonable, not to exceed \$100, shall be paid by the board out of the accident fund to the persons to whom same may be due and payable.

33. (1) Death from Injury.—Where death results from any injury the amount of the compensation shall be:—

(a) **Amount.**—the necessary expenses of the burial of the workman, not exceeding \$75;

(b) **Where Widow or Invalid Husband Left Dependent.**—where the widow or an invalid husband is the sole dependent, a monthly payment of \$20;

(c) **Where Widow or Invalid Husband With Children.**—where the dependents are a widow or an invalid husband and one or more children, a monthly payment of \$20, with an additional monthly payment of \$5 for each child under the age of sixteen years, not exceeding in the whole \$40;

(d) **Where Dependents all Children Under 16.**—where the dependents are children, a monthly payment of \$10 for each child under the age of sixteen years, not exceeding in the whole \$40;

(e) **Where Other Dependents.**—where the dependents are persons other than those mentioned in the preceding clauses, a sum reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, to be determined by the board, and not exceeding to the parents or parent \$20 per month, and not exceeding in the whole \$30 a month.

(2) **Time Limited of Payments to Dependents Under Clause (e) Above.**—In the case provided for by clause (e) of sub-section (1), the payments shall continue only so long as, in the opinion of the board, it might reasonably have been expected, had the workman lived that he would have continued to contribute to the support of the dependents.

(3) **Compensation to Dependents.**—Where there are both total and partial dependents the compensation may be allotted partly to the total and partly to the partial dependents.

(4) **Board may Apply Payment for Benefit of Children.**—Where the board is of opinion that for any reason it is necessary or desirable that a payment in respect of a dependent child shall not be made directly to its parent, the board may direct that the payment be made to such person or be applied in such manner as the board may deem most for the advantage of the child.

(5) **Computation of Amount of Compensation.**—Exclusive of the amounts provided for by section 32 and paragraph (a) of sub-section (1) of this section, the compensation payable as provided by sub-section (1) of this section shall not in any case exceed 55 per cent. of the average earnings of the workman mentioned in section 37, and, if the compensation payable under that sub-section would in any case exceed that percentage, it shall be reduced accordingly, and, where several persons are entitled to monthly payments, the payments shall be reduced proportionately.

34. (1) Monthly Payments Cease if Widow Marries.—In Lieu a Lump Sum is Paid.—If a dependent widow marries, the monthly payments to her shall cease, but she shall be entitled in lieu of them to a lump sum equal to the monthly payments for two years and such lump sum shall be payable one month after the day of her marriage.

(2) Sub-Section 1 not to Apply to Widow with Children.—Sub-section (1) shall not apply to payments to a widow in respect of a dependent child or children.

35. When Payments to Child Cease.—A monthly payment in respect of a child shall cease when the child attains the age of sixteen years or dies.

36. Expenses of Medical Attendance Where no Dependents.—Where a workman leaves no dependents such sum as the board may deem reasonable for the expenses of his medical attendance, nursing, care, maintenance and burial shall be paid to the persons to whom such expenses are due.

37. Compensation for Total Disability.—Where permanent total disability results from the injury the amount of the compensation shall be a weekly payment during the life of the workman equal to 55 per cent. of his average weekly earnings during the period of twelve months, if he has been so long employed, but if not then for any less period during which he has been actually working in the employment of his employer; provided that such compensation shall not be less than six dollars per week, except in cases where the average earnings of the employee are less than six dollars per week, when he shall receive as weekly compensation the total amount of such average weekly earnings.

38. (1) Compensation for Permanent Partial Disability.—Where permanent partial disability results from the injury the compensation shall be a weekly payment of 55 per cent. of the difference between the average weekly earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident and the compensation shall be payable during the lifetime of the workman.

(2) When Impairment of Earning Capacity does not Exceed 10 per cent.—Where the impairment of the earning capacity of the workman does not exceed 10 per cent. of his earning capacity, the board shall, unless in the opinion of the board it would not be to the advantage of the workman to do so, direct that instead of such weekly payment such lump sum as may be deemed to be the equivalent of it shall be paid to the workman.

39. Temporary Total Disability.—Where temporary total disability results from the injury the compensation shall be the same as that prescribed by section 37, but shall be payable only so long as the disability lasts.

40. Temporary Partial Disability.—Where temporary partial disability results from the injury the compensation shall be the same as that prescribed by section 38, but shall be payable only so long as the disability lasts and sub-section (2) of that section shall apply.

41. (1) Computation of Average Earnings.—Average earnings shall be computed in such a manner as is best calculated to give the rate per week or month at which the workman was remunerated, but not so as in any case to exceed the rate of \$2,000 per annum.

(2) Methods of Computing to Suit Cases.—Where, owing to the shortness of the time during which the workman was in the employment of his employer, or the casual nature of his employment or the terms of it, it is impracticable to compute the rate of remuneration as of the date of the accident, regard may be had to the average weekly or monthly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed then by a person in the same grade employed in the same class of employment and in the same locality.

(3) Computation of Earnings Where Workman was Employed by two or More Employers.—Where the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one of them and at another time for another of them, his average earnings shall be computed on the basis of what he would probably have been earning if he had been employed solely in the employment of the employer for whom he was working at the time of the accident.

(4) Employment by the Same Employer Concurrently.—Employment by the same employer shall mean employment by the said employer in the grade in which the workman was employed at the time of the accident uninterrupted by absence from work due to illness or any other unavoidable cause.

(5) Sum Paid for Special Expenses not Reckoned in Earnings.—Where the employer was accustomed to pay the workman a sum to cover any special expenses entailed on him by the nature of his employment that sum shall not be reckoned as part of his earnings.

(6) Special Cases.—Where in any case it seems more equitable the board may award compensation having regard to the earnings of the workman at the time of the accident.

42. Pension, Gratuity, etc., Considered in Fixing Amount of Periodic Payments.—In fixing the amount of a weekly or monthly payment regard shall be had to any payment, allowance or benefit which the workman may receive from his employer during the period of his disability, including any pension, gratuity or other allowance provided wholly at the expense of the employer and any sum so paid by the employer may be paid to the employer out of the compensation.

43. Fortnightly or Monthly Payments Instead of Weekly.—The board may, wherever it is deemed advisable, provide that the payments of compensation may be fortnightly or monthly instead of weekly.

44. Board may Make Payments Through Others for Benefit of Minor Dependent.—Where a workman or a dependent is an infant under the age of twenty-one years, or under any other legal disability, the compensation to which he is entitled may be paid to such person or be applied in such manner as the board may deem most for his advantage.

45. Board may Re-Imburse Person Paying Medical and Burial Expenses.—Where medical, hospital or surgical treatment and burial expenses have been paid for a workman by any person the board may, if it thinks proper, repay the same out of the moneys referred to in sections 32 and 33, sub-section 1 (a).

THE WORKMEN'S COMPENSATION BOARD.

46. "Workmen's Compensation Board."—There is hereby constituted a commission for the administration of this Act to be called 'The Workmen's Compensation Board,' which shall consist of a commissioner to be appointed by the Lieutenant-Governor-in-Council, and shall be a body corporate.

47. When Commissioner Absent, Commissioner pro tem Appointed.—In the case of the illness, or absence from Manitoba of the commissioner or of his inability to act from any cause, the Lieutenant-Governor-in-Council may appoint some person to act *pro tempore* in his stead and the person so appointed shall have all the powers and perform all the duties of a commissioner during such illness, absence or inability.

48. Commissioner may be Removed.—The commissioner shall, subject to section 49, hold office during good behaviour, but may be removed at any time for cause.

49. Commissioner Ceases to Hold Office at 75.—Unless otherwise directed by the Lieutenant-Governor-in-Council the commissioner shall cease to hold office when he attains the age of 75 years.

50. His Whole Time to Duties.—The commissioner shall devote the whole of his time to the performance of his duties under this Part.

51. Salary.—The salary of the commissioner shall be \$7,500 per annum, and such salary shall be payable out of the administration fund.

52. Powers of Board.—The board shall have the like powers as the Court of King's Bench in Manitoba or a judge thereof for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents and things.

53. (1) Commissioner not to—The commissioner shall not directly or indirectly:—

(a) **Become Interested in any Industry.**—have, purchase, take or become interested in any industry, to which this Part applies, or any bond, debenture or other security of any person or corporation owning or carrying it on;

(b) **Hold Shares, Bonds, Debentures of Liability Company.**—be the holder of shares, bonds, debentures or other securities of any company which carries on the business of employers' liability or accident insurance;

(c) **Have Interest in Preventive Machinery, etc.**—have any interest in any device, machine, appliance, patented process or article which may be required or used for the prevention of accidents.

(2) **Penalty for Interest in or Holding same after Three Months.**—If any such industry, or interest therein, or any such share, bond, debenture, security, or thing comes to or becomes vested in a commissioner by will or by operation of law and he does not within three months thereafter sell and absolutely dispose of it, he shall cease to hold office.

54. Offices of Board Location.—Sittings may be Held in any Part of Province.—The offices of the board shall be situated in the City of Winnipeg, and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, and in that case sittings may be held in any part of Manitoba.

55. Time, etc., of Sittings Decided by Commissioner.—The commissioner shall sit at such times and conduct his proceedings in such manner as he may deem most convenient for the proper discharge or speedy dispatch of business.

56. (1) Appointment of Officers.—The board shall appoint a secretary and a chief medical officer, and may appoint such auditors, actuaries, accountants, inspectors, medical referees and other officers, clerks and servants as the board may deem necessary for carrying out the provisions of this Part and may prescribe their duties and, subject to the approval of the Lieutenant-Governor-in-Council, may fix their salaries.

(2) **Office Held at Pleasure of Board.**—Every person so appointed shall hold office during the pleasure of the board.

57. (1) Jurisdiction of Board.—The board shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and as to any matter or thing in respect of which any power, authority, or discretion is conferred upon the board, and the action or decision of the board thereon shall be final and conclusive and shall not be open to question or review in any court and no proceedings by or before the board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by *certiorari* or otherwise into any court.

(2) **Exclusive Jurisdiction Extends to Determining.**—Without thereby limiting the generality of the provisions of sub-section (1) it is declared that such exclusive jurisdiction shall extend to determining—

(a) **Whether Industry Falls Within the Act.**—whether any industry or any part, branch or department of any industry falls within the provisions of this Part;

(b) **Whether any Part of Industry Constitutes a Part of any Industry Within Act.**—whether any part of any such industry constitutes a part, branch or department of an industry within the meaning of this Act.

(3) **Board may Rescind, Alter, Amend Orders, etc.**—Nothing in sub-section (1) shall prevent the board from reconsidering any matter which has been dealt with by it or from rescinding, altering or amending any decision or order previously made, all of which the board shall have authority to do.

58. Board may Award Sum for Expenses in Contested Claim.—The board may award such sum as it may deem reasonable

to the successful party to a contested claim for compensation or to any other contested matter as compensation for the expenses he has been put to by reason of or incidental to the contest and an order of the board for the payment by an employer of any sum so awarded, when filed in the manner provided by section 60, shall become a judgment of the court in which it is filed and may be enforced accordingly.

59. (1) Board may act on Report of Officers.—The board may act upon the report of any of its officers and any inquiry which it shall be deemed necessary to make may be made by any one of the officers of the board, or by the commissioner or some other person appointed to make the inquiry, and the board may act upon his report as to the result of the inquiry.

(2) Powers of Person Making Enquiry.—The person appointed to make the inquiry shall for the purposes of the inquiry have all the powers conferred upon the board by section 52.

60. Order by Board may be Filed in Court of K. B. as a Judgment.—Enforced as Judgment.—An order of the board for the payment of compensation by an employer or insurance company or underwriter, who is liable to pay the compensation and any other order of the board for the payment of money made under the authority of this Part, or a copy of any such order certified by the secretary to be a true copy may be filed in the Court of King's Bench for Manitoba and when so filed shall become a judgment of that court and may be enforced accordingly.

61. (1) Board may Make Regulations.—Disallowances by Lieutenant-Governor-in-Council.—The board may make such regulations as may be deemed expedient for carrying out the provisions of this Part and to meet cases not specially provided for by this Part and a certified copy of every regulation so made shall be transmitted forthwith to the Provincial Secretary, but any such regulation may within one month after it has been received by the Provincial Secretary, be disallowed by the Lieutenant-Governor-in-Council.

(2) Regulations After Approval by Lieutenant-Governor-in-Council Become Effective.—Published in Gazette.—Every regulation which is approved by the Lieutenant-Governor-in-Council shall immediately after approval or on the day named by him for that purpose become effective, and after the period for disallowance has expired every regulation which has not been disallowed shall become effective and every regulation which has become effective shall be forthwith published in *The Manitoba Gazette*.

(3) Penalty for Contravention.—Every person who contravenes any such regulation after it has become effective shall for every contravention incur a penalty not exceeding \$50.

(4) Board to Determine Workman's Right to Bring Action.—Where an action in respect of an injury is brought against an employer by a workman or a dependent the board shall have jurisdiction upon the application of the employer to determine whether the workman or dependent is entitled to maintain the action or only to compensation under this Part, and if the board determines that the only right of the workman or dependent is to such compensation, the action shall be forever stayed.

62. Accounts of Board Audited by Controller General.—The accounts of the board shall be audited by the Controller General or by an auditor appointed by the Lieutenant-Governor-in-Council for that purpose, and the salary or remuneration of the last mentioned auditor shall be paid by the board.

63. (1) Annual Report of Board to Lieutenant-Governor-in-Council.—The board shall on or before the 15th day of January in each year make a report to the Lieutenant-Governor-in-Council of its transactions during the last preceding calendar year and such report shall contain such particulars as the Lieutenant-Governor-in-Council may prescribe.

(2) Report to be Laid Before Assembly.—Every such report shall be forthwith laid before the Assembly if the Assembly is then in session, and if it is not then in session within fifteen days after the opening of the next session.

64. Provincial Treasurer may Examine Business of Board.—The Provincial Treasurer, or an officer of his Department named by him for that purpose, shall once in each year and oftener if so required by the Lieutenant-Governor-in-Council examine into the affairs and business of the board for the purpose of determining as to the sufficiency of the provisions of the board to insure the payment of compensation promptly as awarded under this Part.

CONTRIBUTION BY THE PROVINCE.

65. Provincial Grant for Costs of Administration.—To assist in defraying the expenses incurred in the administration of this Part there shall be paid to the board out of the Consolidated Revenue Fund such annual sum as the Lieutenant-Governor-in-Council may direct.

ACCIDENT FUND.

66. Insurance Companies, etc., to Contribute to Accident Fund.—An accident fund shall be provided by contributions to be made, in the manner hereinafter provided, by insurance companies and underwriters insuring employers liable to pay compensation under this Part, and by employers carrying their own insurance as herein provided, and the compensation payable by each in respect of accidents which happen in any industry to which this Part applies shall be paid out of the contribution made by each.

67. Where Board has Insufficient Funds for Payment of Compensation, Advances may be made out of Consolidated Revenue Fund.—Where at any time there is not sufficient money in the hands of the board available for payment of the compensation which may become due, the Lieutenant-Governor-in-Council shall direct that the same be advanced to the board out of the Consolidated Revenue Fund and in that case the amount advanced shall be repaid to the board by the insurance companies, underwriters and employers carrying their own insurance liable respectively to pay the same, and shall when collected be paid over to the Treasurer.

68. Companies and Employers to have on Deposit with Board Sufficient Money to Meet Payments.—It shall be the duty of the board at all times to maintain in hand to the credit of each insurance company, underwriter or employer carrying his own insurance a sum that shall in the opinion of the board be sufficient to meet all the payments to be made in respect of compensation as they may become payable by each.

69. (1) Separate Accounts.—Separate accounts shall be kept showing the contributions made to the board by each insurance company, underwriter or employer carrying his own insurance and showing the disposition thereof by the board.

(2) Special Regulations Where Proper Precautions Against Accidents not Taken by Employer.—Where a greater number of accidents have happened in any industry than in the opinion of the board would have happened if proper precautions had been taken for the prevention of accidents in it, or where in the opinion of the board the ways, works, machinery or appliances in any industry are defective, inadequate or insufficient, the board may prescribe special regulations for such industry and provide special penalties for the non-observance of such regulations. Such special regulations may, in addition to such other matter as the board may prescribe, order the installation of special safety appliances.

70. Board may add Industries to Schedule.—The board shall have jurisdiction and authority to add to the industries mentioned in the schedule to this Part any industry not included in such schedule.

STATEMENTS AND POLICIES TO BE FILED.

71. (1) Employer to Prepare and Forward Statement of Wages Earned by all Employees, etc.—Subject to the regulations of the board every employer shall, not later than three months before the day named by proclamation as mentioned in section 3, and yearly thereafter on or before such date as shall be prescribed by the board, prepare and transmit to the board a statement of the amount of the wages earned by all his employees during the year then last past and an estimate of the amount which will be expended for wages during the then current year, and such additional information as the board may require, both verified by the statutory declaration of the employer or the manager of the business, or where the employer is a corporation by an officer of the corporation having a personal knowledge of the matters to which the declaration relates.

(2) Policy of Insurance Satisfactory to Board to be Filed.—At the time of filing the said statements and declaration every employer shall file with the board a policy of insurance in form satisfactory to the board, issued by a company or underwriter approved by the board, providing for payment to the board of the compensation which may become payable by the employer under this Part during the period covered by such statement and policy.

Employers Carrying own Insurance Need not File Policy.—Provided always that the board may with the approval of the Lieutenant-Governor-in-Council permit an employer to carry his or their own insurance against liability to pay compensation under this Part, in which case such employer shall not be required to file a policy as above provided.

(3) More than one Business may Require more than one Statement.—Where the business of the employer embraces more than one branch of business or class of industry the board may require separate statements to be made as to each branch or class of industry and such statements shall be made, verified and transmitted as provided by sub-section (1).

(4) **Penalty for Non-Compliance with Sub-Sections (1), (2) and (3).**—If an employer does not comply with the provisions of sub-sections (1), (2) or (3) he shall incur a penalty not exceeding two hundred dollars a day for every day during which such non-compliance continues and if any statement made in pursuance of their provisions is not a true and accurate statement of any of the matters required to be set forth in it, the employer for every such untrue statement shall incur a penalty not exceeding \$500.

(5) **Temporary Business.—Employer to Give Security.**—Where an employer engages in any industry within the scope of this Part and the board is of the opinion that the industry is to be carried on only temporarily it may permit the employer to file a policy or to give security sufficient to provide for the liability of the employer under this Part for such limited period as the board may provide.

(6) **Commissioner may fix Rates to be Charged by Insurance Companies.**—The commissioner shall have power after hearing upon notice to insurance companies and underwriters filing policies with the board under this Part, by order in writing to fix just and reasonable rates to be charged by such companies or underwriters for issuing policies, to be filed under this Part, and may from time to time in like manner vary the rates so fixed.

(7) **Insurance Companies not Entitled to Payment for Services Except as Allowed by Board.**—No insurance company or underwriters shall be entitled to charge or pay for acquisition expenses of procuring any policy filed under this part or making adjustments of claims or other services in respect of such policy, more than such percentage of the premium paid in respect of such policy as the board may from time to time fix and allow.

72. (1) **Employer of Industry Commenced After Date Prescribed by Board Must Furnish Estimate of Probable Amount of Pay-Roll for Balance of Year.**—Where and industry coming within this Part is established or commenced after the date prescribed by the board pursuant to section 71 of this Part, it shall be the duty of the employer forthwith to notify the board of the fact and to furnish to the board an estimate of the probable amount of his pay roll for the remainder of the year, verified by statutory declaration and to file a policy of insurance as provided in said section unless the board permits such employer to insure his own workmen.

(2) **Defaults Under Sub-Section (1) Same as Section 71.**—For defaults in complying with the provisions of sub-section (1) the employer shall incur the like penalty as is provided with respect to defaults by section 71.

73. (1) **Board may Examine Books and Accounts to Ascertain Whether Statements made are Correct.**—The board, and any officer or person authorized by it for that purpose, shall have the right to examine the books and accounts of the employer and to make such other inquiry as the board may deem necessary for the purpose of ascertaining whether any statement furnished to the board under the provisions of sections 71 and 72 is an accurate statement of the matters which are required to be stated therein or of ascertaining the amount of the pay-roll of any employer or of ascertaining whether any industry or person is under the operation of this Part, and for the purpose of any such

examination and inquiry the board and the person so appointed shall have all the powers which may be conferred on a commissioner under "An Act respecting commissioners to make inquiries concerning public matters." Revised Statutes of Manitoba, 1913, c. 34. and amendments thereto.

(2) Penalty for Obstruction Under Sub-Section (1) of this Section.—Any employer and every other person who obstructs or hinders the making of the examination and inquiry mentioned in sub-section (1), or refuses to permit it to be made shall incur a penalty not exceeding \$500.

(3) Board may Take Affidavits, etc., and Administer Oaths.—The board and every officer or person authorized by it to make examination or inquiry under this section shall have power and authority to require and take affidavits, affirmations or declarations as to any matter of such examination or inquiry and to take statutory declarations required under this Part and in all such cases to administer oaths, affirmations and declarations and certify to the same having been made.

74. (1) Officers have Right of Entry into Establishments of Employers for Inspection.—The board and any officer or person authorized by it for that purpose shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to pay compensation under this Part and the premises connected with it and every part of them for the purpose of ascertaining whether the ways, works, machinery, or appliances therein are safe, adequate and sufficient and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the board may deem necessary.

(2) Penalty for Obstructing Officers Under Sub-Section (1) of this Section.—Any employer and every other person who obstructs or hinders the making of any inspection under the authority of sub-section (1), or refuses to permit it to be made shall incur a penalty not exceeding \$500.

75. (1) Officers of Board not to Divulge Information.—No officer of the board and no person authorized to make an inquiry under this Part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the board any information obtained by him or which has come to his knowledge in making or in connection with an inspection or inquiry under this Part.

(2) Penalty for Breach of Sub-Section (1) of this Section.—Every person who contravenes any of the provisions of sub-section (1) shall incur a penalty not exceeding \$500.

76. Penalties, how Recoverable.—The penalties imposed by or under the authority of this Part shall be recoverable under "The Manitoba Summary Convictions Act," and when collected shall be paid over to the board and shall form part of the Administration Fund.

ADMINISTRATION FUND.

77. (1) Amount to be Paid and Insurance Company to Contribute out of Premiums 7 1-2 per cent. Towards

Expenses of Administration.—Each employer carrying his own insurance and each insurance company or underwriter approved by the board and insuring against liability under this Part shall pay to the board, when required so to do by order of the board, on account of the expenses of administering this Part, seven and one-half per cent. of the premiums charged by such insurance company or underwriter or which such employer would have been charged had he insured against his liability to pay compensation, under this Part and such payments shall constitute a fund to be called the administration fund.

(2) **Statement as to Premiums Charged by Insurance Companies.**—Every such insurance company or underwriter shall furnish to the board, whenever required so to do by the board, statements of all sums charged for premiums in respect of policies filed with the board as required by this Act verified by statutory declaration.

(3) **Amount Payable by Employers Under Sub-Section (1).**—The board shall be the judge of what premiums would have been charged employers carrying their own insurance and shall fix the amount payable by such employers under sub-section (1).

(4) **Order of Board When Filed Becomes Judgment of Court in Favor of Board.**—An order of the board under sub-section (1) shall, when filed as provided in section 60, become a judgment of the court in favour of the board and may be enforced as in said section 60 provided.

PAYMENT OF COMPENSATION.

78. (1) **Before Employer or Insurance Company are Approved by Board Sum of Money to be Deposited to Cover Compensation.**—Every insurance company or underwriter issuing any policy to be filed pursuant to section 71 and every employer carrying his own insurance pursuant to said section shall, before the filing of any such policy and before the board shall approve of any such insurance company or underwriter or permit any such employer to carry his own insurance, pay to the board such sum in cash as the board may determine, to be available immediately for payment on account of the compensation for which such insurance company or underwriter or employer carrying his own insurance shall become liable under this Part.

(2) **Before Payment Board to Fix Amount and to Whom Payable, etc.**—The board shall, before paying compensation under this Part, except as hereinbefore provided, make an order fixing the amount of such compensation and designating the person or persons to whom such compensation is to be paid and requiring the insurance companies, underwriters and employers liable to pay the same to pay the amount so fixed to the board, and the same shall be payable accordingly, and any such order when filed as provided in section 60, shall become a judgment of the court in favour of the board against such insurance company, underwriter or employer carrying his own insurance and may be enforced as in said section 60 provided.

(3) **Board may Advance Compensation Pending Receipt of Money.**—Pending the receipt of the amount to be paid as provided in sub-section (2), the board may advance compensation out of the sum paid as provided in sub-section (1).

(4) **Amounts Paid in Returned When Company or Employer Withdraws from Business.**—When any such insurance

company, underwriter, or employer carrying his own insurance withdraws from the business and is no longer liable under this Part or under any order of the board, the sum paid as provided in sub-section (1) shall be repaid.

79. Penalty for Non-Filing of Policy by Employer.—In the case of a work or service performed by an employer in any of the industries for the time being included under this Part for which the employer would be entitled to a lien under "The Mechanics' and Wage Earners' Lien Act" it shall be the duty of the owner as defined by that Act to see that a policy of insurance is filed by such employer as required by section 71 or 72 of this Part unless such employer has been permitted to carry his own insurance and if any such owner fails to do so he shall be personally liable to the penalties provided by section 71.

79A. (1) Amount to be Paid as Compensation has Priority over Debts Under "The Assignments Act," etc.—There shall be included among the debts which, under "The Assignments Act," "The Manitoba Trustee Act," and "The Companies Winding-up Act," are, in the distribution of the property, in the case of an assignment or death, or in the distribution of the assets of a company being wound up, under the said Acts respectively, to be paid in priority to all other debts, the amount of any compensation the liability for which accrued before the date of the assignment or death or before the date of the commencement of the winding up, and the said Acts shall have effect accordingly.

(2) Liability for Periodical Payment to be Lump Sum for Which Such Payments may be Commuted.—When the compensation is a periodical payment the liability in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum, to be determined by the board, for which the periodical payments may be commuted.

(3) Priority Good only for Claims up to \$500.—Such priority in respect of any individual claim for compensation shall not exceed \$500.

RETURNS OF ACCIDENTS.

80. (1) Accident to be Reported to Board Within Three Days.—Every employer shall, within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages, notify the board by registered post of the:—

(a) **Happening and Nature.**—happening of the accident and nature of it;

(b) **Date and Time.**—date and time of its occurrence;

(c) **Name and Address of Workman.**—name and address of the workman;

(d) **Place Where Happened.**—place where the accident happened;

(e) **Name and Address of Physician.**—name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury.

Other Information.—And shall, in every case, furnish such proper details and particulars respecting any accident or claim to compensation as the board may require.

(2) Penalty.—For every contravention of sub-section (1) the employer shall incur a penalty not exceeding \$50.

INDUSTRIAL DISEASES.

80A. (1) Industrial Diseases to be Deemed Accidents.—Entitled to Compensation as Injury by Accident.—Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed, or his death is caused by an industrial disease and the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments, the workman or his dependents shall be entitled to compensation as if the disease were a personal injury by accident and the disablement were the happening of the accident, subject to the modifications hereinafter mentioned, unless at the time of entering into the employment he had wilfully and falsely represented himself in writing as not having previously suffered from the disease.

(2) **Payable by Employer.**—The compensation shall be payable by the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due.

(3) **Procedure to Ascertain if Workman Contracted Disease While Working for Employer.**—The workman or his dependents, if so required, shall furnish the employer mentioned in the next preceding sub-section with such information as to the names and addresses of all the other employers by whom he was employed in the employment to the nature of which the disease was due during such twelve months as such workman or his dependents may possess, and if such information is not furnished or is not sufficient to enable that employer to take the proceedings mentioned in sub-section 4 that employer upon proving that the disease was not contracted while the workman was in his employment shall not be liable to pay compensation.

(4) **Last Employer May Bring in Former Employer.**—If that employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer he may bring such employer before the board and, if the allegation is proved, that other employer shall be the employer by whom the compensation shall be paid.

(5) **Where Disease Result of Gradual Process Former Employers to Contribute.**—If the disease is of such a nature as to be contracted by a gradual process any other employers who during such twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer by whom the compensation is payable such contributions as the board may determine to be just.

(6) **Fixing the Amount of Compensation.**—The amount of the compensation shall be fixed with reference to the earnings of the workman under the employer by whom the compensation is payable and the notice provided for by section 18 shall be given to the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due and the notice may be given notwithstanding that the workman has voluntarily left the employment.

(7) **Disease Deemed due to Nature of Employment.**—If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of schedule 2 and the disease contracted is the disease in the first

column of the said schedule set opposite to the description of the process the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

(8) Right to Compensation even if Section does not Apply.—Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is the result of any injury in respect of which he is entitled to compensation under this Part.

81. Applies only to Industries in Schedule 1.—This Part shall apply only to the industries mentioned in schedule 1 hereto and to such industries as shall be added to them under the authority of this Part and to employment in such industries.

PART II.

82. Application of Sections 83 to 85.—Subject to section 84, sections 83 to 85 shall apply only to the industries to which Part I does not apply and to the workmen employed in such industries, but outworkers and persons engaged in clerical work and not exposed to the hazards incident to the nature of the work carried on in the employment and persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business, who are employed in industries under the operation of Part I, but who are excluded from the benefit of the Provisions of Part I, shall not by this section be excluded from the benefit of the provisions of sections 83 to 85.

83. (1) Liability of Employer for Defective Ways, Works, etc., and for Negligence of his Servants.—Where personal injury is caused to a workman by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of his employer or by reason of the negligence of his employer or of any person in the service of his employer acting within the scope of his employment, the workman, or if the injury results in death, the legal personal representatives of the workman and any person entitled in case of death shall have an action against the employer, and if the action is brought by the workman he shall be entitled to recover from the employer the damages sustained by the workman by or in consequence of the injury and if the action is brought by the legal personal representatives of the workman or by or on behalf of persons entitled to damages under an Act respecting compensation to Families of Persons killed by an accident, Revised Statutes of Manitoba, 1913, c. 36, they shall be entitled to recover such damages as they are entitled to under that Act.

(2) Liability of Person Supplying Defective Ways, Work, Plant, etc.—Where the execution of any work is being carried into effect under any contract, and the person for whom the work is done owns or supplies any ways, works, machinery, plant, buildings or premises and by reason of any defect in the condition or arrangement of them personal injury is caused to a workman employed by the contractor or any sub-contractor, and the defect arose from the negligence of the person for whom the work or any part of it is done or of some person in his service and acting within the scope of his employment, the person for whom the work or that part of the work is done shall be liable to the action as if the workman had been employed by him, and for that purpose shall be deemed to be the employer of the workman within the meaning of this

Part, but any such contractor or sub-contractor shall also be liable to the action as if this sub-section had not been enacted, but not so that double damages shall be recoverable for the same injury.

(3) **Right or Liability as Between Persons.**—Nothing in sub-section (2) shall affect any right or liability of the person for whom the work is done and the contractor or sub-contractor as between themselves.

(4) **Workman Continuing Having Knowledge of Defect.**—A workman shall not, by reason only of his continuing in the employment of the employer with knowledge of the defect or negligence which caused his injury, be deemed to have voluntarily incurred the risk of the injury.

84. Certain Common Law Rules no Longer to be Followed.—A workman shall hereafter be deemed not to have undertaken the risks due to the negligence of his fellow workman and contributory negligence on the part of the workman shall not be hereafter a bar to recovery by him or by any person entitled to damages under this Act respecting Compensation to Families of Persons Killed by Accident, Revised Statutes of Manitoba, 1913, c. 36, in an action for the recovery of damages for an injury sustained by or causing the death of the workman while in the service of his employer for which the employer would otherwise have been liable.

85. Contributory Negligence to be Considered in Assessing Damages.—Contributory negligence on the part of the workman shall nevertheless be taken into account in assessing the damages in any such action.

86. Farm Laborers, Menials, etc., Excluded.—This Act shall not apply to farm labourers or domestic or menial servants or to their employers.

87. "The Employers Liability Act" Repealed.—"The Employers' Liability Act," Revised Statutes of Manitoba, 1913, chapter 61, is hereby repealed.

88. "The Workmen's Compensation Act" Repealed.—"The Workmen's Compensation Act," Revised Statutes of Manitoba, 1913, chapter 209, is hereby repealed.

89. Commencement.—Part I of this Act shall come into force on proclamation of the Lieutenant-Governor-in-Council, and Part II, namely, sections 82 to 88 inclusive, shall come into force on the day to be appointed by the Lieutenant-Governor-in-Council, under the provisions of section 3 of this Act.

SCHEDULE I.—(SECTION 81.)

INDUSTRIES THE EMPLOYERS IN WHICH ARE LIABLE TO PROVIDE COMPENSATION.

Class 1.—Lumbering, logging, river-driving, rafting, booming, saw-mills, shingle-mills, lath-mills; manufacture of veneer, excelsior, staves, spokes, or headings; lumber yards (including the delivery of lumber) carried on in connection with saw-mills; the creosoting of timbers.

Class 2.—Pulp and paper mills.

Class 3.—Manufacture of furniture, interior woodwork, organs, piano actions, pianos, canoes, small boats, coffins, wicker and rattan ware, mattresses, bed-springs, artificial limbs, cork articles, cork carpets or linoleum, upholstering, picture framing and cabinet work.

Class 4.—Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, articles and wares or baskets, matches or shade rollers; lumber yards (including the delivery of lumber) carried on in connection with planing mills or sash and door factories, cooperage, not including the making of staves or headings.

Class 5.—Mining, reduction of ores and smelting; preparation of metals and minerals; boring and drilling, including sinking of artesian wells (except when done by an employer coming under Class 13); manufacture of calcium carbide, carborundum or alundum.

Class 6.—Sand, shale, clay or gravel pits; marble works, stone cutting or dressing; manufacture of brick, tile, terra-cotta, fire-proofing, paving blocks, sewer pipe, roof tile, plaster blocks, plaster board, slate or artificial stone.

Sub-Class A of Class 6.—Quarries, stone crushing, lime kilns; manufacture of cement.

Class 7.—Manufacture of glass, glass products, glassware, porcelain or pottery.

Class 8.—Iron, steel, or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, shot, sheet metal, boilers, furnaces, stoves, structural steel, iron or metal.

Class 10.—Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, screens, bolts, metal beds, sanitary, water, gas, or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, sheet metal products, buttons of metal, ivory, pearl, or horn, dry batteries, cameras, sporting goods, firearms, windmills, ivory articles, rubber stamps, pads or stencils, machine shops, not elsewhere included in Schedule 1, the industry of carrying on a blacksmith shop.

Class 11.—Manufacture of agricultural implements, threshing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs or baby carriages; car shops.

Class 12.—Manufacture of gold or silverware, plateware, watches, watch-cases, clocks, jewellery or musical instruments.

Class 13.—Manufacture of chemicals, corrosive acids, or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, including the handling and delivery thereof; wood alcohol, celluloid articles; the manufacture, transmission and distribution of natural or artificial gas and operations connected therewith; the cutting, storing, handling and delivery of natural ice.

Sub-Class A of Class 13.—The manufacture of fireworks, gun-powder, ammunition, nitro-glycerine, dynamite, gun-cotton or other high explosives.

Class 14.—Manufacture of paint, colour, varnish, oil, japans, turpentine, printing ink, printers' rollers, tar, tarred, pitched or asphalted paper.

Class 15.—Distilleries, breweries; manufacture of spirituous or

malt liquors, malt, alcohol, wine, vinegar, cider, mineral water, soda waters, or methylated spirits.

Class 16.—Manufacture of non-hazardous chemicals, drugs, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations; shoe-blackening or polish, yeast, baking powder or mucilage.

Class 17.—Milling; manufacture of cereals or cattle foods, warehousing or handling of grain or operation of grain elevators, threshing machines, clover mills, or ensilage cutters.

Class 18.—Manufacture or preparation and distribution of meats or meat products or glue.

Sub-Class A of Class 18.—Packing houses, abattoirs, manufacture of fertilizers and all work incidental thereto (not incidental to any other industry).

Class 19.—Tanneries.

Class 20.—Manufacture of leather goods and products, belting, whips, saddlery, harness, trunks, valises, trusses, imitation leather, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires or hose.

Class 22.—Sugar refineries; manufacture of dairy products, butter, cheese, condensed milk or cream, biscuits, confectionery, spices, condiments, salt or any kind of starch; bakeries.

Sub-Class A of Class 22.—Canning or preparation of fruit, vegetables, fish or food-stuffs; pickle factories.

Class 24.—Manufacture of tobacco, cigars, cigarettes or tobacco products.

Class 26.—Flax mills, manufacture of textiles or fabrics, spinning, weaving and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas bags, shoddy, felt, cordage, ropes, fibre, brooms or brushes; asbestos goods, hair cloth and other hair goods; work in manilla or hemp; tents, awnings and articles not otherwise specified made from fabrics or cordage; the erection of awnings by the manufacturer.

Class 27.—Manufacture of men's or women's clothing, white-wear, shirts, collars, corsets, hats, caps, furs, robes, feathers or artificial flowers.

Class 28.—Power laundries, dyeing, cleaning or bleaching.

Class 29.—Printing, photo engraving, engraving, lithographing, book-binding, embossing, manufacture of stationery, paper, cardboard boxes, bags, wall-paper, or paper-mache.

Class 30.—Heavy teaming or cartage; safe-moving or moving of boilers, heavy machinery, building stone and the like; warehousing, storage; teaming and cartage; including the hauling for hire by means of any vehicle, howsoever drawn or propelled, of any commodity or material, scavenging, street cleaning or removal of snow or ice.

Class 32.—Steel building and bridge construction; installation of elevators, fire escapes, boilers, engines or heavy machinery; bridge building, not included in Schedule 1, the erection of wind-mills.

Class 33.—Bricklaying, mason work, stone setting, concrete work, plastering; manufacture of concrete blocks; structural carpentry, lathing, the installation of pipe organs; house wrecking or house moving.

Class 35.—Painting, decorating or renovating; sheet metal work and roofing.

Class 36.—Plumbing, sanitary or heating engineering, gas and steam fitting; operation of theatre stage or moving pictures; operation of passenger or freight elevators, where workmen are specially employed therefor and which are not operated in connection with

an industry included in another class, including the operation of elevators used in connection with an industry to which this schedule does not apply or in connection with a warehouse or shop or an office or other building or premises.

Class 37.—Sewer construction, tunnelling, shaft sinking and well-digging, the maintenance and operation of a waterworks system; excavation work for cellars, foundations and canals; trenching less than six feet deep, for gas pipes, water-pipes or wire conduits; and all excavation work where the depth is more than six feet and the width is less than half the depth.

Class 38.—Construction, installation or operation of electric power lines or appliances and power transmission lines, electric wiring of buildings and installation of lighting fixtures; construction or operation of an electric light system, construction or operation of an electric light works not included elsewhere in Schedule 1, construction or operation of telegraph or telephone lines, construction or operation of telephone lines and works for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company, except where such telephone lines or works are within the legislative authority of the Parliament of Canada.

Class 41.—Construction or operation of railways, road making or repair of roads with machinery; making and repairing of roads of all kinds not included in Schedule 1, manufacture of asphalt material and paving material.

Class 43.—Ship-building, dredging, subaqueous construction or pile-driving, fishing, stevedoring, operation of and work upon wharves, operation of dry docks, not included in Schedule 1.

Class 44.—If not included elsewhere any trade or business connected with the industries of:—

Lumbering, mining, quarrying, fishing, manufacturing, building, construction, engineering, transportation, operation of electric power lines, waterworks, and other public utilities, navigation, operation of boats, ships, tugs and dredges, operation of grain elevators and warehouses; teaming, scavenging and street cleaning, painting, decorating and renovating, dyeing and cleaning, or any occupation incidental thereto or immediately connected therewith.

Class 45.—The trade or business, as defined by sub-section 2 of section 2, of a municipal corporation, a public utilities commission, any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation, a board of trustees, of a police village and a school board.

Class 46.—The construction or operation of railways operated by steam, electric or other motive power, street railways and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway.

Class 47.—The construction or operation of car shops, machine shops, steam and power plants and other works for the purposes of any such railway or used or to be used in connection with it when constructed or operated by the company which owns or operates the railway.

Class 48.—The construction or operation of telephone lines and works within the legislative authority of the Parliament of Canada, for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company.

Class 49.—The construction or operation of telegraph lines and works for the purposes of the business of a telegraph company or

used or to be used in connection with its business when constructed or operated by the company.

Class 50.—The construction or operation of steam vessels and works for the purposes of the business of a navigation company or used or to be used in connection with its business when constructed or operated by the company, and all other navigation, towing, operation of vessels, and marine wrecking.

Class 51.—The operation of the business of an express company which operates on or in conjunction with a railway, or of sleeping, parlour or dining cars, whether operated by the railway company or by an express, sleeping, parlour or dining car company.

Class 52.—The operation otherwise than on tracks, on streets, highways or elsewhere of cars, trucks, wagons or other vehicles and rollers and engines propelled by steam, gas, gasoline, electric, mechanical or other power or drawn by horses or mules.

SCHEDULE 2.—(SECTION 80A.)

Description of disease.	Description of process.
Anthrax	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelae....	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelae—	Any process involving the use of mercury or its preparations or compounds.
Phosphorous poisoning or its sequelae	Any process involving the use of phosphorous or its preparations or compounds.
Arsenic poisoning or its sequelae.	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis	Mining.

PROVINCE OF ALBERTA.

THE WORKMEN'S COMPENSATION ACT.

(OFFICE CONSOLIDATION).

Being Chapter 10, 1908, of the Statutes of Alberta (*Assented to March 5, 1908*), as amended by Chapter 9, 1913, First Session (*Assented to March 25, 1913*), and Chapter 2, 1913, Second Session (*Assented to October 25, 1913*).

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

SHORT TITLE.

1. This Act may be cited as "The Workmen's Compensation Act, 1908."

APPLICATION OF ACT AND DEFINITIONS.

2. This Act shall apply only to employment by the undertakers as hereinafter defined, on or in or about a railway, factory, mine, quarry or engineering work, and to employment by the undertakers as hereinafter defined on, in or about any building which is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition thereof. 1913, First Sess., cap. 9, s. 39.

(2) In this Act, unless the context otherwise requires—

1. "Railway" means a road owned by a private person or public company on which carriages run over metal rails, and shall include railways or tramways operated by electric or other power;

2. "Factory" means a building, workshop, or place where machinery driven by steam, water or other mechanical power is used, and includes mills where manufactures of wood, flour, meal, pulp or other substances are being carried on, also smelters where metals are sorted, extracted or operated on; every laundry worked by steam, water or other mechanical power, and also includes any dock, wharf, quay, warehouse, ship building yard, where goods or materials are being stored, handled, transported or manufactured;

3. "Mine" means any kind of mine, and includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, railways and sidings, both below ground and above ground, in and adjacent to a mine, and any such shaft, level and inclined plane of and belonging to the mine;

4. "Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, watermain or sewer, and includes any other work for the construction, alteration or repair of which machinery, driven by steam, water or other mechanical power, is used. 1913, First Sess., cap. 9, s. 39.

5. "Quarry" means an open cut from which rock is cut or taken for building purposes;

6. "Undertaker," in the case of a railway, means the person or company owning or operating the railway; in the case of a factory, quarry, laundry, smelter or warehouse means the owner, occupier or operator thereof; in the case of a mine means the owner or operator thereof, and in the case of an engineering work, or other work specified within this Act, means the person undertaking the construction, alteration, repair or demolition;

7. "Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

8. "Workman" includes every person who is engaged in an employment to which this Act applies whether by way of manual labour or otherwise, but does not include any person employed otherwise than by way of manual labour whose remuneration exceeds twelve hundred dollars a year, or an out-worker, but, save as aforesaid, means any such person who has entered into or works under a contract of service or apprenticeship with an employer in any employment to which this Act extends, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable;

9. "Dependants" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

10. "Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister, adopted child, foster parent;

11. "Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

The exercise and performance of the powers and duties of a local or municipal authority or corporation shall, for the purposes of this Act, be treated as the trade or business of the authority or corporation.

LIABILITY OF EMPLOYERS TO WORKMEN FOR INJURIES.

3. If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employ-

ment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this Act.

(2) Provided that—

- (a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman from earning full wages at the work at which he was employed. 1913, First Sess., cap. 9, s. 39.
- (b) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid;
- (c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or permanent disablement, be disallowed.

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act, including any question as to whether the employment is one to which this Act applies, or as to whether the person injured is a workman to whom this Act applies, or as to the amount or duration of compensation under this Act, the question, if not settled by agreement shall, subject to the provisions of the first schedule to this Act, be settled by arbitration, in accordance with the second schedule to this Act.

(4) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this subsection when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

TIME FOR TAKING PROCEEDINGS.

4. Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice in writing of the accident has been given as soon as practicable after the happening thereof, and before the workman has voluntarily left

the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided always that—

- (a) The want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from the province, or other reasonable cause; and
- (b) The failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the province, or other reasonable cause.

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivery the same at, or sending it by post in a registered letter addressed to the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

CONTRACTING OUT.

5. If the Attorney-General, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act, and that where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2) The Attorney-General may give a certificate to expire at the end of a limited period of not less than five years, and may

from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) If complaint is made to the Attorney-General by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsection (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Attorney-General shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Attorney-General in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Attorney-General.

(7) The Attorney-General may make regulations for the purpose of carrying this section into effect.

SUBCONTRACTING.

6. Where any person (in this section referred to as the principal) in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal which is in the way of the principal's trade or business, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by arbitration under this Act.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident

occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

PROVISION AS TO CASES OF INSOLVENCY OF EMPLOYER.

7. Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer making an assignment for the benefit of or a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employers to the workman the workman may prove for the balance in the assignment or liquidation proceedings.

(3) There shall be included among the debts which under The Assignments Act, and The Companies Winding-Up Ordinance, are in the distribution of the property in the case of an assignment, and in the distribution of the assets of a company being wound up, under the said Act and Ordinance respectively, to be paid in priority to all other debts, the amount, not exceeding in any individual case five hundred dollars, due in respect of any compensation the liability wherefor accrued before the date of assignment or the date of the commencement of the winding up, and the said Acts shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this Act.

(4) The provisions of this section with respect to preferences and priorities shall not apply where the assignor or the company being wound up has entered into such a contract with insurers as aforesaid.

(5) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

REMEDIES BOTH AGAINST EMPLOYER AND STRANGER.

8. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) If the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person

who has been called on to pay an indemnity under the section of this Act relating to subcontracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act.

PROVISIONS AS TO EXISTING CONTRACTS.

9. Any contract existing at the commencement of this Act whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

10. Notwithstanding anything hereinbefore contained this Act shall not apply to the employment of agriculture, nor to any work performed or machinery used on or about a farm or homestead for farm purposes or for the purposes of improving such farm or homestead and for greater certainty but so as not to restrict in any degree the generality of the foregoing words of this section this Act shall not apply to any of the following employments on a farm:

- (a) Threshing, cleaning, crushing, grinding or otherwise treating grain or sawing wood, posts, lumber or other wooden material, or otherwise treating the same, or the pressing of hay, by any kind of machinery or motive power, and whether such machinery or motive power be portable or stationary, and whether the same be owned and operated by the farmer or farmers for whose purpose the same is being used, or by any other farmer or other person for gain, profit or reward.
- (b) The construction, repair or demolition of any farm building, windmill, derrick or other structure.

(2) The word "factory" as defined in this Act shall not be held to include any building, workshop, place or mill on a farm used for the purposes of such farm.

(3) The words "mine" or "quarry" as defined in this Act shall not be held to include any mine or quarry on a farm used for the purposes only of such farm.

(4) The words "engineering work" as defined in this Act shall not be held to include any ditch, drain, well, or other excavation on a farm being constructed or repaired for the purposes of such farm, or any adjoining farm or farms.

COMMENCEMENT.

11. This Act shall come into operation on the first day of January, nineteen hundred and nine, but shall not apply in any case where the accident happened before the commencement of this Act.

SCHEDULES.

Unless the context otherwise requires—

- (a) The words "Court" or "District Court" when used in these schedules shall mean the District Court of the district in which all the parties concerned reside, or, if they reside in different districts, then of the district in which the accident out of which the matter arose occurred, or any judge of such District Court;
- (b) "Rules of Court" shall mean rules of court made and promulgated as provided for in The District Courts Act.

FIRST SCHEDULE.**Scale and Conditions of Compensation.**

- (1) The amount of compensation under this Act shall be:
 - (a) Where death results from the injury—
 - (i) If the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one thousand dollars, whichever of those sums is the larger, but not exceeding in any case eighteen hundred dollars, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;
 - (ii) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and
 - (iii) If he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding two hundred dollars;
 - (b) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed ten dollars. 1913, Second Sess., cap. 2, s. 18.

Provided that as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than ten dollars, one hundred per cent. shall be substituted for fifty per cent. of his average weekly earnings, but the weekly payment shall in no case exceed seven dollars and fifty cents.

(2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:

- (a) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;
- (b) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;
- (c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;
- (d) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

(3) In fixing the amount of the weekly payment regard shall be had to any payment, allowance or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(4) Where a workman has given notice of an accident he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination,

or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the clerk of the court shall be a sufficient discharge in respect of the amount paid in:

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(6) Rules of court may provide for the transfer of money paid into court under this Act from one court to another court in the province.

(7) Where a weekly payment is payable under this Act to a person under any legal disability the court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

(8) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled by the court, and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, by the court. Where there are both total and partial dependants nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

(9) Where on application being made in accordance with rules of court, it appears to the court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in securities or investments approved by the court by the clerk of the court in his name as clerk.

(11) Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (11) of this schedule otherwise than in accordance with regulations made by the Attorney-General or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the court on application may, on payment by the applicants of such fee not exceeding ten dollars as may be prescribed, refer the matter to a medical referee appointed by the Lieutenant-Governor in Council.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Attorney-General, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Attorney-General, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and as to the fee to be paid under this paragraph.

(13) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding ten dollars.

(14) Where any weekly payment has been continued for not less than six months the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as the court shall deem just, and such lump sum may be ordered by the court to be invested or

otherwise applied for the benefit of the person entitled thereto:

Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(15) If a workman receiving a weekly payment ceases to reside in the province, he shall thereupon cease to be entitled to receive any weekly payment unless a medical referee appointed hereunder certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(16) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(17) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

SECOND SCHEDULE.

Arbitration, Etc.

(1) For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the court, according to the procedure prescribed by rules of court.

(3) The Arbitration Ordinance or any Act of the Legislature of Alberta substituted therefor shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the court, and the decision of the court on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Supreme Court en banc; and the court shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the court.

(4) The court may summon a medical referee to sit with the court as an assessor.

(5) Rules of court may make provision for the appearance in any arbitration under this Act of any party by any other person.

(6) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator or court, subject as respects such court to rules of court. The costs, whether before a committee or an arbitrator or in the court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules and such taxation may be reviewed by the court.

(7) In the case of the death, or refusal or inability to act, of an arbitrator, the court may, on the application of any party, appoint a new arbitrator.

(8) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the clerk of the court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a judgment of the court:

Provided that—

- (a) No such memorandum shall be recorded before seven days after the despatch by the clerk of notice to the parties interested; and
- (b) Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, objects to the recording of such memorandum and proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, then the memorandum shall only be recorded, if at all, on such terms as the court under the circumstances may think just; and
- (c) The court may at any time rectify the register; and
- (d) Where it appears to the clerk of the court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the court and the court shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances may seem just; and
- (e) The court may, within six months after a memorandum of an agreement as to the redemption of a weekly payment

by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to the satisfaction of the court that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances may seem just.

(9) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

(10) The duty of District Courts under this Act shall, subject to rules of court, be part of the duties of such courts, and the officers of such courts shall act accordingly, and rules of court may be made both for any purpose for which this Act authorizes rules of court to be made, and also generally for carrying into effect this Act so far, as it affects such courts, and proceedings therein.

(11) No court fee, except such as may be prescribed under paragraph (12) of the first schedule to this Act, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award.

(12) Any sum awarded as compensation shall, unless paid into court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13) Any committee, arbitrator or court may, subject to regulations made by the Attorney-General, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

(14) The Attorney-General may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred

by this Act exclusively on courts or judges thereof, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisos (d) and (e) of paragraph (8) of this schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential or supplemental provisions as may appear to the Attorney-General to be necessary or proper for the purposes of the order.

CASES UNDER ALBERTA WORKMEN'S COMPENSATION ACT.

Cangeme vs. Alberta Coal Mining Co. (1912), 5 Alta. L. R. 173.

The right of appeal from the judge's decision is not given expressly by the Act, but by implication it is given by Sched. II (4) in the case of "any decision on any question of law." No other or further right of appeal is given.

Barrie vs. Diamond Coal Co., Ltd. (1914), 7 Alta. L. R. 138.

No appeal lies from a Judge's finding on a question of fact provided there was evidence to support his decision.

Ferguson vs. Brick and Supplies, Ltd. (1914), 7 Alta. L. R. 337.

A workman was employed by a brick supply company to do the ordinary work of a labourer. He had worked for one day shovelling clay from a pit into a car which carried the clay to the plant. On the morning of the next day, as he was going to the place to continue the same work, he was asked by a fellow-workman to help put back on the track one of the cars, used for carrying the clay, which had become derailed. The workman, with others, went to help shift the car and, whilst doing so, was injured. No foreman nor any one in authority had told the workman to help, nor was any one there to supervise when the work was being done.

Held, the accident arose out of and in the course of the man's employment.

Lastuka vs. Grand Trunk Pacific R.W. Co. (1913), 24 W.L.R. 137.

A workman, employed by a railway company, intimated to the foreman that he wished to discontinue work. The foreman assented but stated that he had no identification ticket to give the workman to enable him to draw his pay. He told the workman to call next day at the office for the ticket and payment. There was some evidence that the man was told to go to the "section-house" for payment, but the foreman denied this. The next day just before the appointed time the workman was seen walking along the line to the section-house. While so walking he was somehow knocked down by one of the employers' trains and killed.

Held, the action did not arise out of nor in the course of the deceased's employment.

Cangeme vs. Alberta Mining Co. (1912), 5 Alta. L. R. 173.

Where an appeal reverses the decision of the District Court Judge and holds a workman entitled to compensation the case should be remitted for the compensation to be assessed by the District Court Judge.

Ferguson vs. Brick and Supplies, Ltd. (1914), Alta. L. R. 337.

Full difference between previous earnings and amount workman able to earn after the accident awarded by judge as com-

pensation where a foot had to be amputated by reason of accident.

Bruno vs. International Coal & Coke Co. (1913), 6 Alta. L. R. 269.

On an appeal by the employer from an award of a District Court Judge the following grounds were raised: (1) The injury was not caused by "accident"; (2) the injury did not arise "in the course of the employment"; (3) notice of the accident was not given "as soon as practicable," and was not excused by mistake or other reasonable cause, or rendered unimportant owing to the employers not being prejudiced by the delay.

The Court (Appeal) held in favor of the workman on the first two grounds. On the ground of delay in notice, it held that there was evidence sufficient to prove that the employers were not prejudiced by the delay, but Harvey, C.J., Scott and Simmons, JJ., alone (Beck and Walsh, JJ., dissenting) held in favor of the employers on the question of "Mistake or other reasonable cause." Upon this the Court ordered (Beck and Walsh) JJ., dissenting on the ground that as the employers had substantially failed they should pay the workman's costs) that there should be no costs of appeal.

Ferguson vs. Brick and Supplies Ltd. (1914), Alta. L. R. 337.

A workman was injured when helping to replace a truck on a rail. He stepped into a hole and smashed his foot, necessitating amputation. He brought an action for damages, but the action failed. The man, however, was found to be entitled to compensation under the Workman's Compensation Act. The costs of the action were deducted from the compensation.

Reid vs. Leitch Collieries, Ltd. (1912), 4 Alta L. R. 338.

An employer is not estopped from disputing a claim by reason of his insurance company making an offer to the applicant without any authority from the employer. (Appeal).

Bodnar vs. West Canadian Collieries (1912), 5 Alta. L. R. 163.

The District Court Judge, acting as arbitrator under the Act, has power to direct the issue of a foreign commission to take the evidence of witnesses in the arbitration. (Appeal).

Tripodi vs. West Canadian Collieries (1914), 7 Alta. L. R. 167.

A commission to take the evidence of witnesses in a foreign country will be ordered on proper grounds. A commission was ordered to take formal evidence of witnesses resident in Italy. (Appeal).

Smith vs. Link (1911), 17 W. L. R. 550.

An infant employer may be liable under the Workmen's Compensation Act to compensate a workman injured in his employment.

Barrie vs. Diamond Coal Co., Ltd. (1914), 7 Alta. L. R. 138.

The fact that an infant sues with a next friend is a mere irregularity that may be corrected at any time by amendment.

Bodnar vs. West Canadian Collieries (1912), 5 Alta. L. R. 163.

In construing a statute the maxim *expressio unius est exclusio alterius* is a dangerous one to employ, especially where the Act in question is based upon and largely taken from another Act, as is the Alberta Act from the English Workmen's Compensation Act.

Murray vs. Foley (1909), 12 W. L. R. 537.

A workman, a bridge carpenter, was injured at work and claimed compensation against his employers, who were railway

contractors for the Grand Trunk Pacific Railway. They disputed liability on the ground that, as such contractors, they were subject to the exclusive legislative authority of the Parliament of Canada, and that the Public Works Health Act, R. S. C. 1906, Cap. 135, applied to this work, under which Act provisions were made for accidents which excluded the provisions of the Workmen's Compensation Act.

Held, the Public Works Health Act has no relation to the Workmen's Compensation Act and the employers were therefore liable under the latter Act.

Bodnar vs. West Canadian Collieries (1912), 5 Alta. L. R. 163.

English decisions, with reference to a County Court Judge, acting as arbitrator, being *persona designata*, having no powers but those of an arbitrator unless given them expressly by the Act, are distinguished in Alta. A District Court Judge acting as arbitrator under the Alberta Act is not *persona designata*, but acts by reason of the arbitration being assigned to his Court.

Barrie vs. Diamond Coal Company, Ltd. (1914), 7 Alta. L. R. 138.

Whether there has been notice in writing is a question of fact for the decision of the District Court Judge.

Cessarini vs. Hazel (1914), 7 Alta. L. R. 134.

The practice relating to security for costs is inapplicable to proceedings under the Workmen's Compensation Act.

Smolik vs. Walters (1912), 4 Alta. L. R. 179.

Where a plaintiff brings an action for negligence more than six months after the accident, without having made previous claim within six months, and fails to recover damages, then he is not entitled to have compensation assessed under Sect. 3 (4).

The provisions in Sect. 3 (4) as to recovery of compensation are governed by those of Sect. 4 as to time for giving notice and making claim. (Appeal).

Bruno vs. International Coal & Coke Co. (1913), 24 W. L. R. 729.

A foreign workman, Slavonian, understanding English very indifferently, was ignorant that he was entitled to compensation for an injury by accident. He put the whole matter into the hands of the Miner's Union, and they ultimately gave notice of the accident.

Held (appeal) (Harvey, C.J., Scott and Simmons, JJ.): The delay being due to ignorance of legal rights, it was a mistake of law and therefore not a mistake or reasonable cause sufficient to excuse the delay in giving notice.

Per *Beck and Walsh, JJ.*: The facts seemed to show this to be more than merely a mistake of law. There seemed sufficient evidence of a mistake of fact or other reasonable cause to excuse the delay.

Bruno vs. International Coal & Coke Co. (1913), 24 W.L.R.729.

A workman, a miner, consulted his employers' doctor one or two days after he had met with an injury to his eye. The doctor learnt the whole history of the accident and recommended the proper medical treatment. He also recommended eye specialists who were consulted. No written notice of the accident was given to the employers until some considerable time after the accident.

Held (appeal), the employers were not prejudiced by the delay in receiving notice.

Barrie vs. Diamond Coal Co., Ltd. (1914), 7 Alta. L. R. 138.

The question as to whether an employer has been prejudiced by the want or proper notice of the accident is one fact for the trial Judge.

Musgrove vs. Charter Halls Aldinger Co., Ltd. (1913), 5 W. W. R. 102.

A workman was employed by a contractor engaged in the construction of a building at the corner of 7th avenue and 1st street west. He was employed in hauling the building materials from a yard at the corner of 9th avenue and 2nd street west, using his own team of horses. The workman was injured whilst unhitching his team at the yard at midday and claimed compensation.

Held, the accident did not occur on, in or about the building under construction and the employers were not liable.

"About" implies close propinquity or Physical contiguity.

Barrie vs. Diamond Coal Co., Ltd. (1914), 7 Alta. L. R. 138.

A mere irregularity, such as suing by an infant without a next friend, may be amended at any stage of the proceedings.

Armstrong vs. McIntyre (1912), 2 W. W. R. 366.

A man under an arrangement with the owners of a mine to get a limited amount of coal (about 6 car loads) from the mine at so much a car load is not an "owner or operator" of the mine within the definition of an "undertaker" in Sect. 2 (2) 6, and is therefore not liable to compensate a man injured while working for him in getting out the coal.

Ringwood vs. Kerr Bros. (1914), 7 B. W. C. C. 1056.

A railway company employed contractors to put gravel on the approaches to a level crossing which had been ordered by the Board of Railway Commissioners to be done. A workman employed by the contractors was injured by one of the railway company's trains whilst engaged at putting the gravel down.

Held, on appeal, that, though the work was for the purposes of the trade or business of the railway company, it was not "in the way of their trade or business," and therefore the injured workman could not recover compensation against the railway company.

Teppo vs. West Canadian Collieries (1911), 1 W. W. R. 257.

A "Pit-boss" whose duty is to superintend the working of the mine and not necessarily to do any manual labour, although he may in fact do some, is not a workman within the meaning of the Act.

Reid vs. Leitch Collieries, Ltd. (1912), 4 Alta. L. R. 338.

A workman was working for a mining company under a written agreement of which the terms were (inter alia), that he should blast off a certain length of rock from a certain place and load in the employer's cars; that he should supply his own blasting materials; that he should be paid per cubic yard; that the employers should keep the rock drill in order. There were no terms of control.

Held (appeal) the man was an independent contractor and not a "workman" within the meaning of the Act.

Cangeme vs. Alberta Coal & Mining Co. (1912), 5 Alta. L. R. 173.

A coal miner was paid so much for each ton of coal he extracted. He also received an extra payment per set for timbering. He supplied his own tools and worked in a "room" by himself

after he found he could not earn enough when sharing a room with a mate.

Held (appeal), the miner was a "workman."

Armstrong vs. McIntyre (1912), 2 W. W. R. 366.

A member of a threshing gang who was, during a lull in the threshing operations, casually employed to get a limited quantity of coal from a mine at a remuneration of so much a car load is not a workman within the meaning of Sect. 2 (2) S. entitled to claim compensation for injury received while getting the coal.

PROVINCE OF SASKATCHEWAN. THE WORKMEN'S COMPENSATION ACT.

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CONSOLIDATED FOR OFFICE USE, 1916.

Being Chapter 9 of the Statutes of Saskatchewan 1910-11, as amended by Section 42 of Chapter 46 of the Statutes of 1912-13, Section 25 of Chapter 67 of the Statutes of 1913, Section 28 of Chapter 43 of the Statutes of 1915, and Section 27 of Chapter 37 of the Statutes of 1916.

SHORT TITLE.

1. Short Title.—This Act may be cited as "*The Workmen's Compensation Act.*" 1910-11, c. 9, s. 1.

APPLICATION OF ACT.

2. Application of Act.—This Act shall apply only to employment by the principal on or in or about a railway, factory, mine, quarry or engineering work; or in or about any building which is either being constructed or repaired or being demolished. 1910-11, c. 9, s. 2.

INTERPRETATION.

3. Interpretation.—In this Act unless the context otherwise requires the expression:

1. **"Railway."**—"Railway" means a road used by a private person or public company on which carriages run over metal rails and shall include railways or tramways worked by the force and power of steam, electricity or of the atmosphere or by mechanical power or any combination of them;

2. **"Factory."**—"Factory" means a building, workshop or place where machinery driven by steam, water or other mechanical power is used and includes mills where manufactures of wood, flour, meal, pulp or other substances are being carried on, also smelters where metals are sorted, extracted or operated on; every laundry worked by steam, water or other mechanical power and also includes any dock, wharf, quay, warehouse, shipbuilding yard where goods or materials are being stored, handled, transported or manufactured;

3. **"Mine."**—"Mine" means any kind of mine and includes every shaft in the course of being sunk and every level and inclined plane in the course of being driven for commencing or opening any mine or for searching for or proving minerals and all the shafts, levels, planes, works, machinery, tramways, railways and sidings, both below ground and above ground, in and adjacent to a mine and any such shaft, level and inclined plane of and belonging to the mine;

4. **"Engineering Work."**—"Engineering work" means any work of construction or alteration or repair of a railway, harbour, dock, canal, sewer or system of waterworks, and outside electrical construction of all kinds, including the alteration and repair of outside wires, cables, apparatus and appliances; and includes any other work for the construction, alteration or repair of which machinery driven by steam, water or other mechanical power is used;

5. **"Quarry."**—"Quarry" means an open cut from which rock is cut or taken;

6. **"Principal."**—"Principal" in the case of a railway means the person or company owning or operating the railway; in the case of a factory, mine or quarry means the owner, occupier or operator thereof; in the case of an engineering work or other work specified in this Act means the person undertaking the construction, alteration, repair or demolition;

7. **"Employer."**—"Employer" includes any body of persons corporate or unincorporate, any municipality and the legal personal representative of a deceased employer and where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship the latter shall for the purposes of this Act be deemed to be the employer of the workman whilst he is working for that other person;

8. **"Court" or "District Court."**—"Court" or "district court" means the district court of the judicial district in which the defendant resides or in which the accident out of which the matter arose occurred or any judge of such district court;

9. **"Workman."**—"Workman" means every person who is engaged in any employment to which this Act applies whether by way of manual labour or otherwise and whether his agreement is one of service or apprenticeship or otherwise and is expressed or implied.

is oral or in writing; but does not include any person employed otherwise than by way of manual labour whose remuneration exceeds \$1,800 a year;

10. "**Dependents.**"—"Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death or would but for the incapacity due to the accident have been so dependent and where the workman being the parent or grandparent of an illegitimate child leaves such a child so dependent upon his earnings or being an illegitimate child leaves a parent or grandparent so dependent upon his earnings shall include such an illegitimate child and parent or grandparent respectively;

11. "**Member of a Family.**"—"Member of a family" means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, half sister, adopted child, foster parent. 1910-11, c. 9, s. 3; 1913, c. 7, s. 25; 1916, c. 37, s. 27.

4. Liability of Employers to Workman for Injuries.—If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman his employer shall be liable to pay compensation in accordance with the provisions of this Act.

Provided that the employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least one week from earning wages at the work at which he was employed.

(2) Any contract made after the coming into force of this Act whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment shall for the purpose of this Act be void and of no effect; and any such contract existing at the coming into force of this Act shall not for the purposes of this Act be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the time of the coming into force of this Act. 1910-11, c. 9, s. 4.

Western Trust Co. vs. Willoughby and Duncan (1914), 7 W. W. R. 569.

A man was engaged to work an elevator and given careful instructions as to how to manage it. He was told that he should stand inside with the door closed before attempting to start the elevator up or down. This was emphasized as important. Five days after he commenced work the elevator was being used to convey a piano to one of the upper floors. He stopped the elevator too soon at the upper floor so that the floor of the cage was below that of the stage. He jumped out and then reached back into the cage for the lever and started it with the intention of bringing the floors level. He failed to stop it soon enough and tried to jump into the cage and was killed.

Held, the accident arose out of his employment.

Gonyea vs. Canadian Northern R. W. Co. (1913), 26 W. L. R. 57.

A workman employed by a railway company was permitted during his hours of employment to go to the railway yard to fetch some clothes and bedding which had been brought by one of the employer's trains for the workman from his last place of residence. He was injured while at the yard by the negligence of the employer's

servants. An action for damages for negligence, however, failed on the ground that the workman was at the yard for his own purposes and was a mere licensee. The question of compensation under the Workmen's Compensation Act was then tried.

Held (on appeal: Haultain, C. J., and Elwood, J., dissenting) the accident arose out of and in the course of the employment.

Kennedy vs. Grand Trunk Pacific R. W. Co. (1913), 26 W. L. R. 120.

A brakeman was killed by being run over by a shunting train. He was a capable, experienced man. He had jumped off the tender upon which he was riding and was killed when walking over the track to couple up a shunted car to the engine. There was evidence that it was his duty to ride on the step of the tender to where the shunted car was and there couple it up with the engine.

Held (appeal), the death resulted from a risk incidental to the man's employment and therefore arose "out of" the employment; also it arose "in the course of" the employment, because it was in furtherance of his duty that the deceased crossed the line.

5. Compensation Recoverable by Action in District Court.—Such compensation may be recovered by action in the district court. 1910-11, c. 9, s. 5.

6. Such employer shall be liable to pay such compensation whether or not:

(a) **Negligence of Fellow Workmen.**—The injury or death resulted from the negligence of any person engaged in a common employment with the injured employee; or

(b) **Negligence Arising from Defect in Ways, Works, Machinery, etc.**—The injury or death was caused by the negligence of the employer or of any person in his service or by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, building or premises connected with, intended for or used in the business of the employer; or

(c) **Contributory Negligence of Employee.**—The workman contributed to or was the sole cause of the injury or death by reason of his own negligence or misconduct; or

(d) **Risk Incidental to Employment Assumed by Workman.**—The injury or death resulted from a risk arising out of or incidental to the nature of the employment and which the workman expressly or impliedly assumed. 1910-11, c. 9, s. 6.

7. In Case of Death Action to be Brought by Executor or Administrator.—If such injury results in death the action shall be brought by and in the name of the executor or administrator of the deceased workman and shall be for the benefit of the dependents of the deceased. 1910-11, c. 9, s. 7.

8. Where Action Brought Independently of this Act. Procedure.—If within the time limited for bringing an action under this Act an action is brought to recover damages independently of this Act for injury caused by an accident and it is determined in such action that the injury is one for which the employer is not liable in such action but that he would have been liable to pay compensation under this Act the action shall be dismissed; but the judge before whom such action is tried shall, if the plaintiff so chooses, either immediately or in case of an unsuccessful appeal

upon notice to the opposite party within thirty days after the disposition of such appeal, proceed to assess such compensation and to adjudge the same to the plaintiff, and he shall be at liberty to deduct from such compensation all or part of the costs which in his judgment have been caused by the plaintiff bringing his action independently of this Act instead of proceeding under the same, and also, in cases where there has been an appeal the costs of the appeal.

(2) This Act shall be construed as if this section had always existed therein in its present form. 1910-11, c. 9, s. 8; 1915, c. 43, s. 28.

Heath vs. Oliver (1914), 27 W. L. R. 597.

Where a workman elects to proceed independently of the Act he cannot make any claim under the Act (except under Sect. 8), so that when he claims for negligence against a sub-contractor he cannot join a claim against the principal contractor under Sect. 9 of the Act.

9. Subcontracting.—Where in any employment to which this Act applies the principal contracts with any person (in this section called "the contractor") for the execution by or under such contractor of any work in the way of the principal's trade or business the principal shall be liable to pay any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him:

Provided that the principal shall be entitled to be indemnified by any other person who would have been liable independently of this section.

(2) This section shall not apply to any contract with any person for the execution by or under such person of any work which is merely ancillary or incidental to and is no part of or process in the trade or business carried on by such principal.

(3) Nothing in this Act shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal. 1910-11, c. 9, s. 9.

Heath vs. Oliver (1914), 27 W. L. R. 597.

A workman who elects to proceed against a sub-contractor his immediate employer, for negligence apart from the Act cannot join a claim against the principal contractor under Sect. 9 of the Act.

PROVISION AS TO CASES OF INSOLVENCY OF EMPLOYER.

10. Provisions as to Cases of Insolvency of Employer.—

Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workmen then in the event of the employer making an assignment for the benefit of or a composition or arrangement with his creditors or if the employer is a company in the event of the company having commenced to be wound up the rights of the employer against the insurers as respects that liability shall be transferred to and vest in the workman and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employers to the workman the workman may prove for the balance in the assignment or liquidation proceedings.

(3) There shall be included among the debts which under *The Assignments Act* or *The Companies Winding up Act* are in the distribution of the property in the case of an assignment or in the distribution of the assets of a company being wound up under the said Acts respectively to be paid in priority to all other debts, the amount not exceeding in any individual case five hundred dollars due in respect of any compensation the liability whereof accrued before the date of the assignment or the date of the commencement of the winding up and the said Act shall have effect accordingly.

(4) The provisions of this section with respect to preferences and priorities shall not apply where the assignor or the company being wound up has entered into such a contract with insurers as aforesaid.

(5) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company. 1910-11, c. 9, s. 10.

11. Limitation of Right of Action.—An action under this Act shall not be maintainable unless it is commenced within six months from the occurrence of the accident, causing the injury or in case of death within six months from the time of death. 1910-11, c. 9, s. 11.

12. Alternate Remedies.—In the case of any injury for which compensation is payable under this Act the plaintiff may at his option proceed either under this Act against the employer or independently of this Act against the said employer or any other person from whom he may be entitled at law to recover damages; but the plaintiff shall not be at liberty to proceed both under and independently of this Act. 1910-11, c. 9, s. 12.

13. Remedies Against Both Employer and Stranger.—Where compensation is paid under this Act by an employer for an injury caused under circumstances creating a legal liability in some person other than the employer the employer shall be entitled to be indemnified by the said other person. 1910-11, c. 9, s. 13.

14. Application of Act Restricted.—Notwithstanding anything hereinbefore contained this Act shall not apply to the employment of agriculture nor to any work performed or machinery used on or about a farm or homestead for farm purposes or for the purposes of improving such farm or homestead and for greater certainty but so as not to restrict in any degree the generality of the foregoing words of this section this Act shall not apply to any of the following employments on a farm:

- (a) Threshing, cleaning, crushing, grinding or otherwise treating grain or sawing wood, posts, lumber or other wooden material or otherwise treating the same or the pressing of hay by any kind of machinery or motive power and whether such machinery or motive power be portable or stationary and whether the same be owned and operated by the farmer or farmers for whose purpose the same is being used or by any other farmer or other person for gain, profit or reward;

(b) The construction, repair or demolition of any farm building, windmill, derrick or other structure.

(2) The word "factory" as defined in this Act shall not be held to include any building, workshop, place or mill on a farm used for the purposes of such farm.

(3) The words "mine" or "quarry" as defined in this Act shall not be held to include any mine or quarry on a farm used for the purposes only of such farm.

(4) The words "engineering work" as defined in this Act shall not be held to include any ditch, drain, well or other excavation on a farm being constructed or repaired for the purposes of such farm or any adjoining farm or farms.

(5) Notwithstanding anything contained in this section any person undertaking the construction, repair or demolition of any building upon any farm under contract with the owner or occupant of such farm shall be liable to the workmen employed by him for the compensation for injuries provided by this Act. 1910-11, c. 9, s. 14.

The Workmen's Compensation Act, 1910-11, of Saskatchewan is purely an industrial Act, and in its general scope and intent relates only to industrial pursuits.

Held, therefore, not to apply to an accident to an elevator attendant killed when working an elevator in an apartment block.

15. Amount of Compensation.—The amount of compensation recoverable under this Act shall not exceed either such sum as is found to be equivalent to the estimated earnings during the three years preceding the injury of a person in the same grade employed during those three years in a like employment or the sum of \$1,800 whichever is larger but shall not exceed in any case the sum of \$2,000. 1910-11, c. 9, s. 15.

Uhlenburgh vs. Prince Albert Lumber Co. (1913), 23 W. L. R. 539.

In assessing compensation for an injured workman the judge awarded \$2,000. The only evidence as to wages was that the workman was engaged during the milling season for a period of five or six months in each of the two years preceding the accident at a wage of \$2.25 per day.

Held, (appeal) there was not sufficient evidence to find what was equivalent to the estimated earnings for three years of a person in the same grade in a like employment, and the compensation must be reduced to \$1,800.

Kier vs. Bennell (1914), 7 W. W. R. 15.

Sect. 15 only limits but does not fix the measure of compensation recoverable. Compensation is estimated exactly as damages in an ordinary action for personal injury, and if it is fixed at \$1,800 or less then Sect. 15 does not apply, but if the compensation is estimated at over \$1,800 it will then be necessary to take into consideration the "Estimated earnings" during the three years previous to the injury so as to ascertain what amount, up to \$2,000 the injured man is to receive.

In estimating compensation under this Act there may be included medical and hospital expenses; compensation for pain and

suffering, diminution in enjoyment of life, and inability to earn wages as before the accident.

Kier vs. Bennell (1914), 6 W. W. R. 739.

A carpenter was a homesteader and, under the regulations governing Dominion lands, he was compelled to live on his homestead during six months in the year. He was proving up his homestead during the three years immediately preceding the accident. During the time he was on the homestead he was not working as a carpenter.

Held, the workman was not entitled to be paid compensation on the basis of full employment during the preceding three years. The time spent on the homestead should be excluded from the calculation.

16. Compensation not Subject to Deduction.—The amount of compensation recoverable under this Act shall not be subject to any deduction or abatement by reason or on account or in respect of any matter or thing whatsoever save in respect of any sums of money which shall have been paid by the employer to the workman on account of the injury received by the workman, which sum or sums shall be deducted from the amount of the said compensation. 1910-11, c. 9, s. 16.

17. Compensation not to be Charged, etc.—The amount of compensation recoverable under this Act shall not be capable of being assigned, charged or attached and shall not pass to any other person by operation of law nor shall any claim be set off against the same. 1910-11, c. 9, s. 17.

18. Distribution of Compensation in Case of Death.—Where the action is brought on behalf of the dependents of a workman for an injury resulting in death the amount of the compensation awarded after deducting costs shall be divided among the said dependents in such shares as the court may determine. 1910-11, c. 9, s. 18.

19. Actions to be Tried by Judge Without a Jury.—Every action for recovery of compensation under this Act shall be tried by a judge sitting without a jury, and an appeal may be taken from the decision of such judge to the Supreme Court sitting *en banc* upon any question of law or mixed question of law and fact.

(2) This Act shall be construed as if this section had always existed in its present form. 1915, c. 43, s. 28; 1916, c. 37, s. 27 (2).

Uhlenburg vs. Prince Albert Lumber Co. (1913), 23 W. L. R. 539.

No costs were ordered where an appeal was decided in the employer's favour, though on a point that was not raised by them either in the first instance or on appeal.

20. Commencement.—This Act shall come into force on the first day of November, 1911. 1910-11, c. 9, s. 20.

21. From and after the first day of January, 1913, it shall be the duty of every employer to forthwith after the happening of any accident whereby any workman in his employ has become wholly or partially incapacitated from work to report such accident to the secretary of the Bureau of Labour at Regina, together with all the

details of the injury caused thereby as the same are set out in form A of the schedule to this Act, and unless such employer shall have complied with the requirements of this section within ten days after the happening of such accident he shall be deemed guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding \$300 and costs, and to a further penalty not exceeding \$10 and costs for each day subsequent to the expiration of the said interval during which he neglects to make such report and in default of payment to imprisonment for a term not more than three months.

(2) No report required by this section to be made nor any part thereof shall be admitted in evidence or referred to at the trial of any action or in any judicial proceeding whatever except prosecution for the violation of this Act. 1912-13, c. 46, s. 42.

FORM A.

PART I.

1. Employer, place and time:

- (a) Employer's name
- (b) Office address; street and No.
city or village
- (c) Nature of business
- (d) Location of plant or place of work where accident occurred,
if not at office address
- (e) Date on which accident occurred
- (f) Day of week
- (g) Hour of the day

2. Injured person:

- (a) Name
Address
- (b) Sex
- (c) Age
- (d) Speak English
If not, what language?
- (e) Occupation when injured
- (f) Length of experience
- (g) Piece or time worker
- (h) Wages or average earnings per day
- (i) Working days per week

3. Cause:

- (a) Name of machine, tool or appliance in connection with
which accident happened
- (b) Describe in full how accident happened

4. Nature and extent of injury:

- (a) State exactly what part of person injured and nature of
injury
- (b) Has injured person returned to work?
If so, on what date?
- (c) Is injured person still incapacitated for work?
- (d) Attending physician or hospital where sent
Date of report made out by

PART II.

This Part to be filled out and sent in with Part I if extent of injury and disability are then fully known, otherwise detach Part

It after filling names for identification and fill out and send it in after two weeks.

Name of employer

Name of injured person

5. Extent of injury:

(a) Did injury result in death?

(b) Has it caused any permanent physical injury?

6. Amount of disability:

(a) Has injured person returned to work?

If so, on what date?

At what occupation?

And wages per day?

(b) If injured person has not yet returned to work state probable length of disability on account of accident

Date of Report made out by



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Solicitors for the Manufacturers' Life Insurance Company, Yorkshire Fire Insurance Company, Rochester-German Fire Insurance Company,
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MONTREAL.

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